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The Determinants of Reasonable Notice Period
for Wrongful Dismissal:
Legal and Human Resource Perspectives

By

Helen Chor-chi Lam



A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the
requirements for the degree of Doctor of Philosophy

in

Industrial Relations

Faculty of Business

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Faculty of Graduate Studies and Research

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled The Determinants of Reasonable Notice Period for Wrongful Dismissal: Legal and Human Resource Perspectives submitted by Helen Chor-chi Lam in partial fulfillment of the requirement for the degree of Doctor of Philosophy in Industrial Relations.

Dedication

To my mother, Chai-mei,
my husband, Leo, and
my daughter, Elaine,
whose understanding, encouragement and support
has made the completion of this thesis a reality,

and

To the memory of my father, Shiu-fai,
who had instilled in me the value
of academic excellence.

Abstract

Severance compensation has been a topic of growing importance as many organizations strive to gain competitiveness by downsizing and restructuring. However, systematic research on it has been meagre. It is known that when an employee's employment is terminated other than for just cause, a reasonable notice period is required, but what is "reasonable" remains questionable. This study will examine the determinants of reasonable notice periods for two groups of decision-makers - legal and Human Resource (HR) professionals. Legal decisions are expected to influence HR decisions and the analysis of them forms the first part of the study. The second part examines the HR decisions which are likely more complex as other forces, such as economic/financial and social, may also be at work. Finally, a comparison is made between the legal and HR perspectives to see how they relate to each other.

For the legal perspective, relevant court cases in Alberta from 1970-1996 were analyzed. Statistical results indicate that the terminated employee's length of service, age, occupational level, salary, and the labour market condition are significant predictors of the notice period. These factors were, therefore, included in the construction of the HR survey for the second part. To ensure comprehensiveness for the survey, multi-theoretical approaches were also considered and HR practitioners with diverse backgrounds interviewed. In all, eleven factors were identified and examined in the survey. Statistical analyses confirm that all significant factors under the legal perspective are significant under the HR perspective too. The company's financial situation and reason for the termination are also critical determinants for HR decisions. A comparison of the legal and HR perspectives reveals that HR decisions are generally lower than the court decisions. Such a deviation may have important implications for HR professionals and employees.

As this study is believed to be the first that systematically examine the HR severance decisions and compare the legal and HR perspectives, further research will be needed to

corroborate the findings. It is hoped that this study will provide a reference for future decision-making and a basis for further studies.

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Chapter 1

Introduction

A wrongful dismissal claim is a common-law recourse for non-union employees in Canada to seek compensation in the event of employer-initiated terminations other than for just cause. Wrongful dismissals cover a broad range of situations, from terminations due to poor employee performance to terminations arising purely out of economic necessity. Such a dismissal is described as “wrongful” because the employer is said to have committed a breach of an implied employment contract term, namely, the indefinite term of hiring. As a result, proper compensation for employee damage is required. With the substantial increase in competitive pressure in the 1990s driving many organizations to embark on cost-containment measures such as downsizing and permanent layoffs, there is increased emphasis on the issues of termination and related compensation.

Compensation for employees who are terminated is called severance pay. It can be broadly described as the payment of a specific sum, in addition to any back wages or salary, made by an employer to an employee for permanently terminating the employment relationship primarily for reasons beyond the control of the employee (Weber, 1982:593). It may include lump-sum awards for other damages, e.g., for mental stress, or as a punitive measure when the employer acts maliciously in the termination. The basic component of the pay, however, is generally expressed in terms of the number of months or weeks representing the reasonable notice period. This is the duration the courts consider the employer should have given the terminated employee to allow time for seeking alternative employment. In other words, when such notice is not given or inadequate notice is given, wages in lieu of notice are required.

The determination of reasonable notice periods is important to employers, legal professionals, human resource (HR) practitioners, and employees. To the employer, the payments

can amount to substantial sums that impact the organization's cash flow and liabilities. To the terminated employees, the payments are a significant financial source to tide them over the period of unemployment. Lawyers and HR practitioners require a good understanding of the issue to effectively present the cases in court or make recommendations in dismissals to avoid unnecessary litigation costs. Judges need to know the basis for such determination to make decisions in court settlements. Employees, in general, should know their rights in making an informed decision as to whether legal proceedings should be initiated in the event that their employment is terminated.

Despite the growing importance of the issue of severance compensation, systematic research on this topic remains scanty. There have been only a handful of studies that analyze the notice period decisions awarded by courts. While a number of determining factors for the notice period have been cited in legal literature and landmark court cases, it is not generally known how the factors combine to arrive at a reasonable notice period. Often the rationale for the inclusion of certain factors is not spelled out in court decisions. Legal literature (e.g., Harris, 1980; Mole, 1990; and Levitt, 1992) has tried to suggest reasons for the consideration of the major factors. Yet, there exists much room for improvement. Most factors are regarded as critical because they are believed to affect the length of period to find alternative employment. Controversy has arisen as to whether some of those beliefs are true. For example, do higher positioned employees or employees with longer service really have greater difficulty in finding alternative employment and thus deserve greater compensation? To start with, there is the need to extend the previous work in this area to understand the contribution of various factors to the severance decisions.

It should also be noted that there is another major group of decision-makers for severance compensation, the human resource professionals. Not all severance cases involve court awards. In most situations, the compensation is agreed upon between the employer and employee without resort to litigation or settled out-of-court before a court hearing. There are reasons to believe that the two groups of decision-makers, the legal and HR professionals, may not have exactly the same

decision criteria. While HR practitioners must take into consideration past legal settlements to avoid unnecessary litigation costs, they may have other economic and organizational considerations not commonly recognized by courts. Judges usually base decisions more on legal justice and contractual rights, whereas efficiency and effectiveness concerns, social justice principles, and other institutional constraints are inevitably important in organizational studies. Hence, theoretically the determinants of severance notice periods and their respective weight are expected to deviate between the decisions made by judges in the legal setting and HR professionals working in organizations. It is likely that HR professionals in different organizational settings will also differ in their severance decision. However, rigorous empirical work exploring the HR perspective on notice period determination has yet to emerge, much less research that compares the legal and HR perspectives.

The purpose of this paper is to fill this void. First, it will identify the critical decision factors for both the legal and HR perspectives. The main focus will be on the latter because HR decisions which affect most terminated employees directly have not been systematically studied by academics. The findings should provide a reference point for future quantitative decisions. Second, it will be informative to examine if, how and why the two perspectives differ. Both the legal and HR fields are continuously evolving as their environments change. While it is easy to understand why legal decisions affect HR decisions due to the latter's tendency to avoid unnecessary litigation, it should be noted that legal principles can be influenced by outside factors as well. The meaning of "justice" or "fairness" is not cast in stone. Rather, it can be viewed as a social construct. That is why, organization's HR decisions can also have an effect on the legal developments and any future law reform. It is possible that the paradigm on severance pay can swing from the current rights paradigm towards the efficiency paradigm with more and more organizational and economic pressure (England, 1995). It is hoped that this research will provide the basis for future longitudinal interdisciplinary study on severance compensation between the two

fields that can identify and compare their developing trends and examine how they influence each other over time.

The paper will be divided into two main parts. The first part will look at notice period decisions from the legal perspective. In this part, the legal literature will be reviewed and empirical evidence will be analyzed to determine the relative significance of various factors in legal decisions. Past studies (e.g., McShane, 1983; McShane and McPhillips, 1987; and Liznick, 1987) which used empirical evidence were done mainly before 1990, mostly with an emphasis on individual employee characteristics. With the environmental pressures on organizations in recent years and the need to balance the rights and interests of employees and employers (re: *Lazarowicz v. Orenda Engines*, [1961] Ontario Reports 141; *Bohemier v. Storval International Inc.* [1983] 40 Ontario Reports (2d) 264), there may have been some shift in the weights of the factors towards the organizational or macro-economic side. Since 1990 not only marked the beginning of the decade, but also the recession and possibly changes in management philosophy and social values (e.g., people beginning to see that jobs are not for life), past research needs to be updated to capture the recent trends and developments. It may be necessary to add new factors to the analysis, and/or omit some existing ones.

The findings for this first part, i.e., the legal perspective, will serve as a basis for constructing the survey instrument for the second part of the study, the HR practitioners' perspective on notice period decisions. HR practitioners are organizational decision makers who are subject to many different sources of influence, including legal, economic, and social forces. To a certain extent, HR decisions can be more flexible than legal decisions as they are not subject to legal appeals and public scrutiny. As long as the decisions do not trigger employee discontent and litigation, and the superiors in the organization are convinced that the notices are appropriate, HR practitioners usually can have some leeway in making their decisions. In such circumstances, it is possible that individual decision-makers' characteristics may also influence the decision outcomes.

In this part of the study, a conceptual framework will be proposed from a multi-theoretical angle as it is recognized that any one simple theory may not be able to explain such a complex decision phenomenon. The propositions will be tested by empirical data collected by a survey to HR practitioners and the findings will be discussed.

Before concluding the paper, a comparison between the two perspectives will be made, with particular reference to the differences in the significance of the factors examined. Although there will be methodological limitations in comparing the statistical results from the two perspectives, the findings from this exploratory study will at least provide a preliminary understanding of the deviations between the two perspectives and serve as a basis on which future research can be built.

Chapter 2

Literature Review

Legal Background

According to the legal perspective, an employment contract is deemed to be of an indefinite term unless otherwise specified and the implied term is that an employee is entitled to reasonable notice of termination in the case of a unilateral termination by the employer (Levitt, 1992; Jack and Southren, 1997). All jurisdictions in Canada require the employer to give advance notice to employees for termination of employment and the period generally varies with the length of service. The federal and Ontario statutes also have specific provisions for severance pay on top of the notice period for employees who have been employed for a minimum duration of time. These provisions, however, set a minimum only (Levitt, 1992; Weinstein, 1993). Terminated employees, other than those covered by a collective agreement, can also resort to wrongful dismissal suits through the civil courts. In many circumstances, the award granted through such common law proceedings far exceeds the minimum set forth by the statutes.

When explicit contractual provisions on the employment duration or notice period are absent, judges will determine the reasonable notice period based on a number of criteria. The most commonly adopted perspective is that the notice period should be an estimate of the time it will take the employee to obtain a similar job, with similar pay, in the same geographical area (Mole, 1990:81).

The principles and factors used by judges in their decisions are often influenced by previous judicial decisions. A summary of the landmark court cases that had significant effects on subsequent cases and to which this paper refers is given in Appendix I. Among these cases, judges have most commonly referred to *Bardal v. Globe and Mail Ltd.* ([1960] Ontario Weekly Notes 253 at 255) which explicitly laid out the factors to be considered:

There could be no catalogue laid down as to what was reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

These factors have since been cited and used by numerous judges across Canada. Levitt (1992) found that at least 105 factors were used by courts in making notice period decisions (Appendix II). Sometimes, the large number of factors and the lack of a clear guideline as to the weights attached can confuse practitioners more than help them. Many authors (e.g., Harris, 1980; Mole, 1990; and Levitt, 1992) have distilled out the more important factors and have attempted to provide explanations for their significance. These factors include:

Specialization and Status

This factor falls under the character of employment criteria in the Bardal decision. It has been suggested that employees at more senior levels or employees whose jobs are more specialized tend to receive greater awards due to the relative difficulty in finding similar alternative employment (Levitt, 1992). Apparently, the assumption is that there are fewer senior or specialized positions available in the labour market. Fisher (1994:35) commented that "this traditional reasoning, as far as I am aware, has never been proven in any of the thousands of previous cases." He further pointed out that the difficulty in finding alternative employment should, instead, depend on the ratio of vacancies versus unemployed candidates. This raising of doubt on the traditional assumption about the higher occupational level employees having greater difficulty in finding comparable employment was prompted by Justice MacPherson's decision (Cronk v. Canadian General Insurance Company, [1994] 6 Canadian Cases on Employment Law (2d) 15). The debate is just beginning but past decisions, which generally adopted the factors cited in Bardal v. Globe

and Mail, had been taking job status as an important determinant. Unless there is law reform, this traditional Bardal factor will stay on as a predominant factor due to *stare decisis*, that is, abidance to authorities or cases previously adjudicated upon (Hall, 1996).

Length of Service

The longer the service, the longer the notice period tends to be (Mole, 1990; Levitt, 1992; Sproat, 1995). Suggested reasons are that longer service with one company limits employability and the need to reward for longer service. The rationale for the latter has not been clearly set forth (Mole, 1990) although Sproat (1995) suggests that longer-service employees may have a moral claim which has matured into a legal entitlement.

Age

For older employees, it is believed that they will face greater difficulty in finding alternative employment, and hence, should receive greater awards (Mole, 1990; Levitt, 1992). It is not sure whether this is based on actual unemployment statistics, age discrimination theories, or pure belief.

Economic Climate

Where the overall industry is in recession, the tendency is for the notice period to increase because of the difficulty in finding alternative employment. Conversely, if the firm itself is in economic trouble, the need to balance the rights of the employer to reduce the workforce at a reasonable cost against the interest of the employee in receiving adequate notice tends to reduce the notice period (Mole, 1990; Levitt, 1992). This latter view, however, does not agree with the common principle that the notice period should be assessed according to what is fair to the employee and how long the employee needs to find alternative employment (Harris, 1980).

Near Cause

Near cause refers to the situation in which misconduct or incompetency on the employee's part has been proven but is considered not serious enough to warrant summary dismissal without

notice. In some decisions, near cause reduces the notice period. However, other decisions consider either no compensation for just cause or a full award for non-cause, criticizing that the middle ground approach is not in accord with the principles of wrongful dismissal law (Mole, 1990; Levitt, 1992). The inconsistency was resolved by a recent Supreme Court decision (*Dowling v. Halifax (City)* [1998], 33 Canadian Cases on Employment Law (2d) 239) confirming that the “near-cause” argument has no place in wrongful dismissal suits. As such, this factor should have no direct bearing on the notice period for subsequent cases except perhaps when employer references mentioning the near-cause dismissal make successful applications for new jobs more difficult.

Hiring Circumstances

Employees lured away from previous secure positions who are then terminated tend to get longer notice periods. Relocation in taking up the terminated employment also seems to be a factor adding to the notice period (Mole, 1990; Levitt, 1992). It is believed that the employee must have presumed secure employment in making a costly move and should be compensated accordingly. Since this factor may not be directly associated with the difficulty of finding alternative employment, its consideration by judges clearly shows that the decision criteria for the legal perspective is more complex than just an estimation of the length of time in finding alternative employment.

Others

Employees are expected to mitigate against their losses by actively finding alternative employment and accepting comparable work. Failure to do so tends to reduce the notice period (Harris, 1980; Mole, 1990, and Levitt, 1992). On the other hand, aggravating factors on the part of the employer, such as unwarranted and abrupt dismissals or actions that tend to adversely affect the employee’s employability, such as refusal to provide a reference, may merit a greater quantum of damage (Levitt, 1992). A recent Supreme Court decision further confirmed that termination in bad faith is a factor that should lengthen the notice period (*Wallace v. United Grain Growers Ltd.*

[1997], 3 Supreme Court Report, 701). However, before this decision, compensation resulting from aggravating factors by the employer was often considered in separate civil lawsuits, as punitive damages or damages for mental stress, rather than in the notice period decisions.

Quantitative Research

There have only been a few studies conducted on reasonable notice periods in Canada. Using multiple regression analysis, McShane (1983) analyzed 199 court cases across Canada. The sample of cases included all reported or summarized cases published in 20 law journals between January 1960 and June 1982 which provided sufficient information for the analysis. His dependent variable was the number of months of notice awarded by the court. The independent variables included: (a) labour market condition; (b) quality of the plaintiff as an employee; (c) job status; (d) salary; (e) "new job" (i.e., whether a new job was found) ; (f) length of service; (g) year of decision; (h) sex; (i) provincial differences; and (j) age.

Results of the basic model (excluding, salary, age and "new job") as well as the full model showed that length of service and year of the decision were positively related to the notice period. An unfavourable labour market was also found to be associated with a longer notice period. Job status was found to have a significant positive effect on the notice period in the basic model. However, when both age and salary were included, the significance of job status disappeared and salary became a significant factor. Although age and employee quality did not have significant effects, the results were in the predicted direction. There was no evidence, however, of provincial differences or sex discrimination. Overall, about half of the variance was explained. Length of service was the most significant predictor, accounting for approximately 2 months of notice for every 10 years of service.

McShane and McPhillips (1987) conducted similar empirical research for all of B.C.'s known wrongful dismissal cases, published or unpublished (i.e., not formally published in law reports but may be available in courts and law libraries), between January 1980 and April 1986 for

which awards were given. The factors were similar to those used in McShane (1983) with the following changes: (a) costs related to the employee in taking up employment (e.g., relocation) were added; and (b) the employee qualification and provincial factors were excluded.

The basic model (without salary and age) had 138 cases whereas the full model had 102. A reduced model in which factors found to be non-significant in the basic model were excluded was also analyzed. Results indicated that length of service remained the most prominent factor, followed by labour market and age. In general, for every 10 years of service, the plaintiff received 3 months of notice period. This was even greater than that of the previous study and refuted any suggestion that the length of service had declined in importance. Contrary to the previous finding, age was significant to the extent that the length of notice increased by more than one month for every ten years of age. The labour market was found to be even more significant than that from the last study. Job status, salary, employment cost, and year of decision were all found to be significant predictors. As before, the inclusion of salary and age as predictors lowered the significance of job status, but not to the point of non-significance. The marginal significance of the year of the decision might indicate that the upward trend as found in the previous study had stopped. The total variance explained was 69%, much improved from the previous study. The authors suggested the unexplained variance to be due to inter-judge and intra-judge decisions across cases that may be regarded as the inconsistencies in judgement, as well as factors systematically considered in court that had not been uncovered in the study. This implies that there is room for further improvements in empirical analyses.

Wagar and Jourdain (1992) conducted a more recent study covering 177 published and unpublished wrongful dismissal cases between January 1985 and February 1990. Published cases were obtained from various Canadian law reporters, while unpublished cases were analyzed by reference to the All Canadian Weekly Summaries. This study included some variables not used in previous studies. The predicting factors were grouped into 4 categories: (a) characteristics of the

plaintiff - occupational status and the years of service with the hypothesis that these are positively related to the notice period; (b) characteristics of the employer - size of the employer and industry type, with the hypothesis that larger awards were given for larger firms due to their greater financial resources; (c) characteristics of the case - (i) year of the decision (1985 to 1987 versus 1988 to 1990) with the hypothesis that recent decisions were related to greater awards due to trend observations; (ii) province, with B.C. and Ontario being the stronger economies expected to be related to greater awards; (iii) occurrence of constructive dismissal, which was hypothesized to be related to a longer period; and (iv) reasons for the dismissal, measured by two variables, one related to economic factors and the other based on performance-related criteria, which were expected to have no significant effect on the notice period; and (d) other factors relating to the decision, including unfavourable condition regarding availability of employment, existence of a written contract, and situations where the employee was lured away from a previous employer, or where the employee had mitigated the losses and found other employment, which were hypothesized to have a positive relationship with the notice period.

Results of the study showed that the number of months of notice awarded the plaintiff was strongly and positively related to the characteristics of the plaintiff, including occupational status and years of service, as well as the existence of unfavourable employment opportunities. There was also evidence that a longer period of notice was associated with larger employers, cases decided during the 1988 to 1990 period, and decisions from B.C. and Ontario. There was modest support that the period of notice was greater in cases where a written contract existed, mitigation efforts were made by the plaintiff, and the employee was lured away from a previously secured position. While many of the findings echoed those of the previous two studies, this study was important in that it showed the trend toward higher awards had not ceased, a firm's ability to pay might be an important decision factor, and provinces with strong economies tend to give higher awards. These findings seemed to show that while the plaintiff's characteristics still remained dominant,

organizational and economic variables could also be important determinants. Overall, 66% of the notice variance was explained by the model. A drawback of this study is that some factors found to be significant in previous research were not included, e.g., age and salary. Omission of critical factors can have profound implications on all the other effects.

A study conducted by Liznick (1987) also attempted to statistically identify the determinants of reasonable notice. He used a small sample size of 67 cases reported in Ontario between 1965 and 1987. After testing for the significance of the factors listed in the *Bardal* case, the year of termination, as well as various economic factors such as unemployment rates, inflation rate, and growth in gross domestic product, he found that only length of service, job status and salary were significant predictors. After the failure to prove the significance of the economic factors, the author concluded that it appeared only factors particular to the case situation were important. Due to the small sample size, lack of details given for the methodology, omission of potentially critical factors, oversimplification of the occupational classification, and its somewhat inconsistent results as compared with the other three more rigorous empirical studies, the findings of this study should be taken as tentative.

The above studies, summarized in Table 2-1 for reference, provide a good basis for further research.

Table 2-1
Summary of Statistical Research on Reasonable Notice Period

Title, Authors & Year	Sample	Variables Used	Findings
<p>“Reasonable Notice Criteria in Common Law Wrongful Dismissal Cases” McShane, Steven L (1983)</p>	<p>199 published cases or summaries across Canada between Jan 1960 to Jun 1982 (reduced number of cases for full model)</p>	<p>labour market condition quality of employee job status salary new job length of service year of decision sex of employee province (Alberta/BC v. others) age</p>	<p>p < 0.05 non-significant (ns) p < 0.001 (basic model) p < 0.001 ns p < 0.001 p < 0.05 ns ns ns (R² = 0.46 to 0.60)</p>
<p>“Predicting Reasonable Notice in Canadian Wrongful Dismissal Cases” McShane, Steven L & McPhillips, David C (1987)</p>	<p>138 published and unpublished cases in B.C. between Jan 1980 to April 1986 (reduced number of cases for full model)</p>	<p>length of service job status labour market condition employment cost year of decision sex (gender) of employee new job age salary</p>	<p>p < 0.001 p < 0.05 p < 0.001 p < 0.05 p < 0.05 ns ns p < 0.001 p < 0.05 (R² = 0.79 to 0.84)</p>
<p>“The Determinants of Reasonable Notice in Canada Wrongful Dismissal Cases” Wagar, Terry H & Jourdain, Kathy A (1992)</p>	<p>177 published cases and summaries across Canada between Jan 1985 and Feb 1990</p>	<p>occupational status length of service labour market condition size of employer province (BC/Ontario v. others) year of decision written contract mitigation lured into employment industry constructive dismissal reason for dismissal (performance related or not)</p>	<p>p < 0.01 p < 0.01 p < 0.01 p < 0.05 p < 0.05 p < 0.05 p < 0.1 p < 0.1 p < 0.1 ns ns ns (R² = 0.66)</p>
<p>“Wrongful Dismissal: Determining Reasonable Notice” Liznick, Tim (1987)</p>	<p>67 published cases in Ontario between 1965 and 1987</p>	<p>length of service job status - top executives salary age training and experience size of employer sex of employee year of termination unemployment rate inflation rate growth in GDP</p>	<p>significant significant significant ns ns ns ns ns ns ns ns</p>

Although most of the important determinants identified were consistent, there were a few whose effects were different across the studies. For example, McShane (1983) did not find age to be significant while his later 1987 study with McPhillips found the opposite. No explanation was offered for this important difference. Was it due to the sample, the province, the inclusion of different other factors or a shift in judgement? The studies also did not include all the potentially critical factors as suggested by legal literature or prior research. For example, the first two studies ignored organizational characteristics, the third did not include all of the individual level factors, and the fourth did not include the case-specific labour market condition and employee or organizational performance. Although the year of the decision was consistently found to be empirically significant in the first three studies, no reason for its association with the notice period has been advanced. The indication that the labour market factor was more significant in the later studies by McShane and McPhillips (1987) and Wagar and Jourdain (1992) tends to support the notion that there might be a greater emphasis on the external economy.

Harris (1989) reported a study by Fisher and Goodfield (1988) which pursued a line of quantitative research that is slightly different from the above analyses. They conducted a computer analysis on their database of 712 cases covering the period from 1960 to 1987 in all provinces other than Quebec. The cases were recorded under a number of criteria, including, case name, year of service, position, title, age, salary, notice period, case cite, province of case, court, judge, and year of decision. The most practical use of this database is the ease of retrieving similar fact cases for reference. Their analysis by 6 occupational categories on two groups of employees - (a) age above 45 with over 10 years' service and (b) age below 45 with less than 10 years' service - indicated notice periods had generally increased for the period "1985 and after" for employees in group (a) with the exception of the foreman and lower management category. Young professionals in group (b) were also awarded higher awards in the latter period. The writers suggested that this illustrated the courts' acceptance of the fact that even people with professional qualifications can have an

increasingly difficult time obtaining employment after dismissal. Overall, the notice periods for both groups increased by 14% for the latter period but since the change has benefited mostly the older long-term employees, there seemed to be a clear recognition that age and seniority were more important factors than in the past.

The study also rebutted the common belief of the "rule of thumb" formula which consists of anywhere from a week to a month per year of service depending on the position, although there appeared some evidence that the one month per year rule applied more to cases between 8 to 13 years of service. As the seniority began to exceed 12 years of service, the notice period did not keep up using the one month per year rule.

A comparison between the decisions in B.C. and Ontario indicated, overall, no more favourable awards were given in B.C. than in Ontario, although there existed some variations between the provinces in granting awards to different categories of employees.

Rather than reviewing court cases, Rights Associates conducted a survey on severance policy involving 402 human resource and other executives across Canada (Raices, 1992). They reported a variety of issues including the status of severance policies, specifications of severance policies, benefits included in severance packages, relationship between severance policies and litigation, and future status of severance. Formal policies were found to be almost a standard practice (71%) in organizations with more than 5,000 employees. The majority of the respondents (53%) had been involved in litigation on the subject of employee separation. Of the total 175 organizations that were targeted for litigation, 75% did not include a written description of their severance policy in the company's personnel manual. Ninety-eight percent of the respondents used years of service in the calculations of severance followed by 74% using position, 63% using salary, 60% using age, and 48% using the reason for termination. It is not clear from the survey whether the severance benefits were measured in terms of dollars or length of notice periods.

In a more recent study, Rights Associates (1996) confirmed that years of service, position,

age, and reason for separation continued to serve as the bases for severance compensation. Apparently, some general formulae were adopted by most of the 378 organizations surveyed, with 1 week, 2 weeks, or 1 month per year of service being the most common formulae. However, the 1 month per year of service formula applied more to department head levels and above. Twenty-nine percent of the respondents reported making more generous severances in the past four years but the majority did not. The report suggests that severance packages should be constantly benchmarked against market practice and jurisprudence.

While the Rights Associates' studies have provided some useful information to HR practitioners, the confirmation that a factor was used in a decision did not indicate the weight attached to it. Also, the finding from the first study that organizations with written policies were less likely to have litigation could possibly be due to their better severance terms related to their ability to pay, or that they had ample opportunity to thoroughly consider the relevant factors in severance decisions, rather than the fact that they had written policies. On the positive side, the studies have shed light on the possibility that the factors considered by HR practitioners may not be the same as those of the legal professionals. For example, labour market conditions, generally said to be an important factor from the legal perspective, were not considered by the majority of HR respondents as a significant factor, while reason for dismissal, not commonly viewed as a prominent factor in legal notice period decisions, was taken into account by almost half of the participants in the first study and slightly less in the second.

To summarize, there have been only a handful of Canadian quantitative studies that thoroughly address the issue of severance pay determination. The limited number of factors used so far, inconsistencies in some of the factors' significance, apparent shifting trends identified in these studies, and the possible differences between the legal and HR perspectives imply that a more up-to-date empirical study on both the legal and HR perspective is needed. It is to this end that the current study is directed.

Part A - The Legal Perspective

Chapter 3

Research Questions and Hypotheses

Since an employee is paid wages for every day that he/she works, the central question is why there is a need to compensate the employee in the event of involuntary separation. The courts in Canada strictly interpret the situation as one that is in breach of the indefinite contract term, resulting in compensation. This is in sharp contrast to the employment “at will” concept that is common in the U.S. (Weinstein, 1993). Apparently, the presumption of an indefinite term has arisen out of the rights paradigm rather than the efficiency paradigm. The former puts a premium on the employee’s dignity and autonomy while the latter on the employer’s freedom to pursue profitability (England, 1995).

In general, most of the typical severance pay determinants are believed to relate to the degree of difficulty in finding alternative employment. Other factors such as mitigation and relocation have been included for various reasons basically due to what is seen to be fair by the courts. It is apparent that there is more to the granting of a notice period based simply on an estimate of the time required for the employee to obtain a similar job. There is, however, an obvious lack of a theoretical or empirical basis that can help understand the decision criteria. The problem may be attributable to, as Posner (1995: 20) noted, the likely situation that most legal decision makers “still believe that demonstrably correct ... answers to most legal questions ... can be found by reasoning from authoritative texts, either legislative enactments or judicial decisions, and therefore without recourse to the theories, data, insights, or empirical methods of the social sciences, or to personal or political values.” Roberts (1995:278), in analyzing the legal reasoning in relation to the character of employment issue, remarked “[t]he case law reveals a level of legal reasoning that is uncritical, nonscientific, and quite unconvincing” and suggested the courts should

find better justifications. In a similar vein, England (1996:132) noted that the “determination of common law “reasonable” notice periods is notoriously unpredictable.” Apparently, there is an obvious need for empirical work on legal decisions and the development of a theoretical framework to help understand and predict the decisions.

The empirical analysis of this first part of the study will take a practical approach to identify the determinants and their contributions to the notice decision. Contributions towards theory on notice decisions will come in the second part of this paper. Interviews with the HR practitioners suggested that a multi-theoretical framework is appropriate for the complex decisions they are making. Such a framework will be proposed and tested. It is hoped that the theories developed in the second part will not only help explain the HR decisions, but also provide a reference point to which the legal field may start directing its attention.

In the following analysis, potentially important factors will be examined. Those suggested by legal literature and by prior research, including those factors such as mitigation efforts and hiring circumstances that do not relate directly to employability, will be studied. The goal is to provide a more comprehensive and up-to-date analysis which not only will help to understand the past legal determination of notice periods, but will also serve as the basis for the survey framework in the second part of the study on the HR perspective. The factors under study can be broadly classified into four categories, namely, individual factors, macro-economic factors, organizational factors, and other factors not related to the above three categories.

Individual factors

Individual level factors relate to the terminated employee’s characteristics. Such factors have been well addressed in prior empirical research (e.g., McShane, 1983; McShane and McPhillips, 1987). These studies have shown that many individual level factors such as length of service, age, job status, and salary, were significant in severance pay decisions. Length of service was, by far, the most prominent determinant. Although job status and salary may both be proxies for

the character of employment, it is expected that salary can be an important factor even after controlling for the effect of the position level. This follows because within an occupational level, there is a salary range. Just as higher occupational level is expected to be associated with a longer notice period, people with a higher salary within the range are expected to be associated with a longer notice. Both McShane and McPhillips (1987) and Wagar and Jourdain (1992) also found hiring circumstances, such as an employee's necessity to relocate for a job or an employee being lured away from a previous secured employment, to be important.

All of these individual level factors found to be important in the above studies have also been recognized in the legal literature (e.g., Mole, 1990; Levitt, 1992). As such, it is expected that these factors would continue to be relevant factors to consider in the decision process. Hence,

H-A1: All else equal, the notice period awarded by courts is positively related to the affected employee's

- i) length of service**
- ii) age**
- iii) occupational level**
- iv) salary**
- v) special hiring circumstances, i.e., necessity to relocate or having been enticed away from a secured employment.**

Among the prior empirical work already discussed, McShane's 1983 study was the only one that included the factor of employee performance (or quality of employee). Although no significant relationship was found, the result was in the direction predicted. Since there are indications from the legal literature (e.g., see factors 5, 11, 12, 13 in Appendix II) that good performance has influenced notice decisions, it is predicted that good performance will have a positive relationship with the notice period. At the other end, bad performance or near causes have been found in some court decisions as to lower the notice period, especially before the 1998

Supreme Court decision (Dowling v. Halifax (City), 33 Canadian Cases on Employment Law (2d) 239) which eventually clarified the controversy by disregarding “near causes”. As the decisions analyzed were for year 1996 and before, it could still be expected that,

H-A2: All else equal, the notice period awarded by courts is positively related to good employee performance and negatively to bad employee performance.

Both the legal literature and Wagar and Jourdain (1992) have indicated that the lack of mitigation on the part of the employee, such as failing to actively find alternative employment or refusing to take up a new comparable job, should be associated with a reduced notice period. On the other hand, diligent efforts made to mitigate one’s losses in the event of termination may be expected to have a positive influence on the decision, especially when it may reflect both on the employee’s quality of performance and on the unfavourable condition of the labour market for the employee. Hence,

H-A3: All else equal, the notice period awarded by the courts is positively related to diligent mitigation efforts made on the employee’s part, and negatively to a lack of mitigation efforts.

Prior research by McShane (1983 and 1987) and Liznick (1987) included sex/gender of the employee as a control variable in their analyses. Although this factor has not been proven statistically significant in these prior studies, other studies on legal issues involving arbitration decisions (e.g., Bemmels, 1988a, 1988b and 1991) have found that the gender of the employee could be an important factor. Moreover, there is ample evidence from prior research that gender differences exist in the areas of employee compensation, including salary and benefits (e.g., Bielby and Baron, 1986; Olson and Frieze, 1987; and Stroh, Brett, and Reilly, 1992). It is, therefore, important to include the gender variable in the current analysis as a control variable due to its possible influence.

Macro-economic factors

Turning to macro-economic factors, later empirical studies indicated some shifting trends. For example, McShane and McPhillips (1987) showed that the positive relationship between an unfavourable labour market and notice had become more significant, the significance of which was also confirmed by Wagar and Jourdain (1992). One drawback of these studies was that the labour market condition was expressed as a dichotomous variable (McShane, 1983; McShane and McPhillips, 1987; and Wagar and Jourdain, 1992). Cases were classified as to whether a remark was made by the judge in the decision regarding the tightness of the labour market. This is regarded as a weak indicator because it is possible that a judge may have considered the unfavourable labour market without mentioning it. Another weakness lies in the dichotomous nature of the variable because of its inability to reflect the impact of differential degrees of tightness. A better indicator might be the relevant unemployment rate in the geographical area. Although many judges mentioned that their decisions took into consideration the ease of finding alternative employment, usually no clear indication was given as to their references. However, in a recent case decision, *Cronk v. Canadian General Insurance Company* ([1994] 6 Canadian Cases on Employment Law (2d) 15 (Ontario General Division)), it was clear that Judge MacPherson did take note of the unemployment rate among people of different training and educational backgrounds. It is also noted that judges are allowed to take judicial notice of the general economic condition. While they may not be expected to be aware of the specific unemployment rate for every industry or occupation, the general provincial unemployment rate should be common knowledge. With the emphasis of the “availability of alternative employment” criterion among all Bardal case followers and the fact that the unemployment rate is a good indicator of the difficulty of finding alternative employment, one may expect that whether consciously or subconsciously, judges take into consideration such a factor. Therefore,

H-A4: All else equal, the higher the unemployment rate, the longer the notice period awarded by the courts.

To capture situations where the specific job of the plaintiff is very specialized and the scarcity of alternative employment may not be appropriately reflected by the general unemployment rate, it would still be necessary to include in the analysis the case-specific labour market factor as acknowledged by the judges. Hence,

H-A5: All else equal, the notice period awarded by the courts will be longer when the labour market condition is unfavourable to the employee.

Organizational factors

Courts have long identified the need to balance the interests of both employees and employers (re: *Lazarowicz v. Orenda Engines*, [1961] Ontario Reports 141; *Bohemier v. Storwal International Inc.* [1983] 40 Ontario Reports (2d) 264) although the inclination seems to be more on the side of the rights of the employee (England, 1995). Legal literature (e.g., Mole, 1990, Levitt, 1992) has confirmed that in some circumstances, firms in economic trouble not caused by their own fault had received some favourable consideration in setting the notice period. Swift (1983) also suggested that some termination lawyers believed recessions tended to soften the court's traditionally unsympathetic attitude to organizations. In other words, the organizations' need to reduce cost in a competitive situation to maintain financial viability should not be overlooked. Wagar and Jourdain (1992) also found that size of the employer, suggested to be an indicator of a firm's ability to pay, had a modest positive relation with the notice period. All these imply that the financial situation of the employer may have a role to play in the legal notice decisions. With all the pressures from global competition, deregulation, economic recession, and availability of cost-saving technologies in the 1990s, strategic or reactive organizational responses by staff reduction have been almost regarded by organizations as inevitable in many circumstances. If legal decision-makers are responsive to the changing economic situation and organizational needs, it is probable such an organizational factor will be significant. Hence,

H-A6: All else equal, the notice period awarded by the courts will be shorter when

the organization's financial performance is poor.

Other factors

Empirical findings (e.g., McShane, 1983; and Wagar and Jourdain, 1992) have concluded that longer notice periods were positively associated with the year of the decision. The later the year of the decision, the higher tended to be the award. There has been no particular rationale given for this finding. Was this reflecting a shift in values of the judges or of society, or other systematic changes in external conditions such as the economic situation which had not been included in the studies? A look at the periods of study and their relation to the external environment may be warranted.

The first study (Mcshane, 1983) covered 1960 to 1982 during which time the unemployment rate had generally been on the rise, with some minor fluctuations (Statistics Canada Catalogue No. 71-201-XPB and 71-201 Annual)). For the second study (McShane and McPhillip, 1987) covering 1980 to early 1986, although the unemployment rate slightly decreased after reaching its peak in 1983, the decline was relatively little as compared with the drastic increase during the earlier period. Moreover, it is reasonable to expect some time lag in that the judges likely made the decision based on the unemployment condition at the time of termination which was earlier than the award decision date. The third study (Wagar and Jourdain, 1992), which covered a relatively short period from 1985 to early 1990 coincided with a period of a rather stable unemployment rate, and ended prior to the recession in the 1990s. So we do not know what the longer-term effect of the year of the decision factor would be when periods of big fluctuations or large decline in unemployment are involved.

The above discussion suggests that the significant findings of the year of the decision have received little explanation and may well be due to other factors excluded from the analyses, possibly, the unemployment situation. Further, it is understandable that (a) the notice period cannot forever continue to rise without a good reason; (b) courts tend to place an upper limit on the notices,

and (c) the interest of the employer might be receiving increasing attention. In McShane and McPhillips' (1987) study, year of decision was only marginally significant and the authors suggested it was possible that the trend towards higher awards had stopped. They also cited that an increasing number of trial judges had commented that certain decisions were on the high side (e.g., *Anari et. al. v. B. C. Hydro* [1986] 4 Western Weekly Review 123; *Hunter v. Northwood Pulp and Timber Ltd.*, [1985] 62 B.C. Law Review 367). Excessive notice periods have continued to receive criticism (Ames, 1994; Fisher, 1994). In a more recent Manitoba Court of Appeal decision, (*Weibe v. Central Transport Refrigeration (Man) Ltd.*, unreported; May 13, 1994, No. AI-93-30-01200), Judge Roach said "I do not understand why when the principles to be applied to determining reasonable notice remain constant the amount of time determined should be significantly larger than it was in the past." Therefore, it is necessary to include the year of the decision in the current analysis to determine if the previous findings of significance are still valid.

There are also reasons to believe that there may be some industry differences in the decision because of the nature or character of employment. For example, in the construction industry where mobility is high and seasonal layoffs are normally expected, the notice periods awarded may be generally lower than those of other industries. Also, industries involving mostly large players, e.g., government and quasi-government organizations, may tend to have larger awards, possibly due to their greater ability to pay. Hence,

H-A7: All else equal, there exist industry differences in the notice period decisions awarded by the courts, with the construction industry associated with a short notice period and government/quasi-government organizations associated with a longer notice period.

Chapter 4

Data and Methodology

Data source

As this study will compare the legal and HR perspectives, it is important that this part of the analysis is conducted on decisions in the same province as that in which the HR survey in the second part will be done. In this situation, the province of Alberta is selected due to (a) the geographical advantage of contacting HR practitioners; (b) the financial constraints of conducting a large scale Canada-wide survey for this exploratory study, and (c) the promise of support from the two HR professional associations in Alberta. A total of 132 cases on wrongful dismissal in Alberta decided between 1970 and 1996 are included in the current analysis. This time period was chosen because of the lack of Alberta published reports before that time. These cases are reported in various publications including the *Alberta Report*, *Alberta Law Report*, *Canadian Cases on Employment Law*, *Western Weekly Report*, as well as the *Unreported Alberta Decisions* held in the University of Alberta Law Library. In locating these cases, the *Canadian Abridgement* (2nd ed. Vol. R14A September 1996 reissue and R14A Supplement by Carswell Thomson Professional Publishing), an index with case summaries and reference to the published reports, was used as the main source of reference. According to the publisher of the *Canadian Abridgement*, its case digests “comprise a comprehensive collection of case digests, or summaries, of Canadian legal decisions ... you can find digests of virtually every reported decision of Canadian courts or administrative tribunals.” All the summary cases under the section “Employment Law - Termination” were read. The detailed reported decisions were referred to and included in the analysis when they fit the following criteria:

- . Decisions where a reasonable notice period had been awarded for wrongful dismissal which could be under the sub-categories of “notice period”, “just cause” or “constructive

dismissal” and other relevant topics,

. Decisions were not made based on a specific contract length (reasonable notice period for these cases would be the duration between the termination and the contract expiry date),

. Decisions were not related to a union-setting where a collective agreement is in place (common law is not applicable),

. Decisions were not made based on a specific contract termination provision,

. Decisions were not made in relation to a statutory provision on termination,

. Reports included fundamental details, i.e. at least with information on the length of the notice period (or a lump sum that can be converted to a notice period by some calculations), and the length of service (the most critical factor as empirically proven previously.)

In all, 100 reported cases were found using the *Canadian Abridgement* index. These included 6 situations for which no wrongful dismissal was found (either there was just cause or no valid termination by the employer) but the judge gave a provisional reasonable notice period in case wrongful dismissal would be found by higher courts. Where a lower court decision had been overturned by a higher court, the decision of the higher court was used as it represents the final decision, provided that it was given prior to the end of 1996.

The *Canadian Abridgement* does not include unreported cases unless they involve the court of appeal decisions after 1987. On occasions, it was also noted that cases with reasonable notice periods were included in some reported publications but were not found under the Termination section of the *Canadian Abridgement* index. They could have been missed or reported in the index under other categories. To supplement these minor deficiencies, the *Alberta Decisions*, which gives summaries of selected published and unpublished cases, was used. (*Alberta Decisions* has only been available since 1973.) As a result, 13 additional reported

cases and 13 unreported cases were identified and the detailed decisions studied. Six more cases not included in the *Canadian Abridgement* or *Alberta Decisions* were added as they were noted in other legal literature to involve notice periods (Harris, 1989).

The relevant cases were read and their contents analyzed and coded in accordance with the variable descriptions given in the next section.

Regression Variables

Linear regression analysis was used to analyze the data. The variables involved and the coding descriptions are summarized in Table 4-1 below. The dependent variable, NOTICE, is the length of the reasonable notice period awarded in number of months. The other variables are explanatory variables. Variable names are shown in all-capital letters. It should be noted that there were many technical considerations in defining the variables and coding them. Details of how these concerns were addressed are described in Appendix III.

Table 4-1
Explanatory Variables for Regression Analyses

<u>Variable</u>	<u>Description</u>
AGE	age of the employee measured in years
OCCCD	occupational code of the employee measured on a scale of 1 to 4 as follows: 1 for clerical/sales/manual workers 2 for supervisor or senior clerical and equivalent 3 for professionals, junior and middle management 4 for senior management (For details of the classification descriptions, see Appendix III)
LNSAL_96	salary of the employee, including commission, converted to 1996 constant dollar term using the average weekly earnings index (Statistics Canada Catalog 72-201, 72-202, and 72-002), with a natural log transformation to achieve a more normal shaped distribution required for regression analyses
LN_SERV	length of service of the employee measured in years, with a natural log transformation to achieve a more normal shaped distribution required for regression analyses
SEX	gender of the employee dichotomously coded
GDPERF	dummy variable for good performance as acknowledged by the judge indicated by wordings as “exemplary”, “excellent”, “very good”, “very satisfactory”, or “entirely satisfactory”
BDPERF	dummy variable for bad performance as acknowledged by the judge indicated by wordings as “not commendable” or “not an exemplary but a complaining employee” and situations where near causes were found or where just causes were found with provisional notice given
MTG_LK	dummy variable for lack of mitigation efforts on the employee’s part as acknowledged by the judge
MTG_GD	dummy variable for diligent or excellent mitigation efforts on the employee’s part as acknowledged by the judge
ORGBD	dummy variable for poor organizational performance as acknowledged by the judge
HIRING	dummy variable for the existence of special hiring circumstances - having been lured into employment or relocated to take up the employment from which the employee was terminated
LABMKT	dummy variable for poor labour market condition from the employee’s perspective as acknowledged by the judge

Table 4-1 (cont'd)
Variables for Regression Analyses

<u>Variable</u>	<u>Description</u>
UAVE	unemployment rate averaged over the period of one year around the time of termination (seasonally adjusted series in Statistics Canada Catalog 71-201-XPB and 71-201 Annual)
IND_1	dummy variable for manufacturing and trading industries
IND_2	dummy variable for service industries
IND_3	dummy variable for oil and gas and related industries
IND_4	dummy variable for construction and related industries
IND_5	dummy variable for government or quasi-government organizations
YEAR	the last two digits of the year of the trial decision, or in the case of an appeal overturning the trial decision, the year of the appeal decision
EST_AGE	a new variable for employee age that involves the estimation of missing age values by running a regression analysis of AGE on other significant explanatory variables (see Appendix III)
EST_LSAL	a new variable for employee salary that involves the estimation of missing natural log of salary values by running a regression analysis of LNSAL_96 on the other significant explanatory variables (see Appendix III)

For the occupation and industry variables that involve subjective judgment in the codings, reliability checks were done by having another rater do the codings independently. (The initial Cronbach's alpha for the occupational grouping was 0.91, very much in line with that of McShane's 1983 study.) Cases of disagreement were discussed and variable descriptions were refined until total agreement was achieved. Further information on these codings is given in Appendix III.

Due to a number of cases with missing values for AGE and LNSAL_96, regular listwise deletion (Method I) could only make use of 76 cases out of the total 132 cases. In view of the large number of variables that need to be included and the small sample, an alternative method (Method II) using age and salary estimates for missing values was used. The estimates were obtained by regressing the variables, AGE and LNSAL_96, respectively on the other significant explanatory variables. Using this method, 128 out of 132 cases can be analyzed. The new variables with the missing value estimates are "EST_AGE" and "EST_LSAL". Pairwise deletion method (Method III) was also helpful to compare the results although the method has the drawback of inconsistency resulting from the use of different cases to estimate different coefficients (Norusis, 1993). A cross-validation comparing all three methods of analysis adds to the robustness of the study.

Chapter 5

Analyses, Findings and Discussion

Analyses and Findings

The descriptive statistics and the correlation matrix of all the variables are given in Table 5-1 and 5-2 respectively.

Table 5-1
Descriptive Statistics

	N	Minimum	Maximum	Mean	Std. Deviation
AGE	84	26.00	65.00	45.4167	9.3644
BDPERF	132	.00	1.00	6.06E-02	.2395
GDPERF	132	.00	1.00	.4015	.4921
HIRING	132	.00	1.00	.1061	.3091
IND_1	132	.00	1.00	.2727	.4471
IND_2	132	.00	1.00	.2197	.4156
IND_3	132	.00	1.00	.1439	.3524
IND_4	132	.00	1.00	.1364	.3445
IND_5	132	.00	1.00	.1288	.3362
LABMKT	132	.00	1.00	.3636	.4829
LN_SERV	132	-3.26	3.76	1.6520	1.2197
LNSAL_96	120	9.65	12.51	10.9350	.5181
MTG_GD	132	.00	1.00	.2955	.4580
MTG_LK	132	.00	1.00	3.79E-02	.1916
OCCCD	132	1.00	4.00	2.6515	.8648
ORGBD	132	.00	1.00	.1970	.3992
SEX	132	1.00	2.00	1.1742	.3808
UAVE	132	3.43	11.28	7.6626	2.6095
YEAR	132	70.00	96.00	86.4621	6.4895
EST_AGE	128	26.00	65.00	44.1446	8.2879
EST_LSAL	128	9.65	12.51	10.9531	.5079
NOTICE	132	1.00	24.00	9.1193	4.9699
Valid N (listwise)	76				

Table 5-2
Correlations

Pearson Correlation	NOTICE	AGE	BDPERF	GDPERF	HIRING	IND_1	IND_2	IND_3	IND_4	IND_5	LABMKT	LN SERV	LNSAL_96	MTG_GD	MTG_LK	OCCCD	ORGBD	SEX	UAVE	YEAR
NOTICE	1.000	.589**	-.104	-.154	-.140	-.041	-.109	-.086	-.070	.160	.298*	.610**	.432**	-.056	.011	.381**	-.028	-.086	.032	.119
AGE	.589**	1.000	-.131	.107	-.043	-.014	-.080	-.249**	.069	.221*	.308**	.315**	.224	-.080	-.066	.069	-.018	.016	.144	.247*
BDPERF	-.104	-.131	1.000	-.208*	.018	.058	.019	-.077	-.008	-.098	.006	-.163	-.145	.044	-.050	-.008	.114	-.033	.114	.021
GDPERF	.154	.107	-.208*	1.000	.019	-.050	.013	.016	.035	.100	.184*	.207*	.155	.113	-.082	-.027	.031	-.005	.164	.021
HIRING	-.140	-.043	.018	.019	1.000	.010	.174*	-.001	-.137	.014	-.005	-.338**	.001	.208*	-.068	.111	.077	-.029	.086	.010
IND_1	-.041	-.014	-.058	-.050	.010	1.000	-.325**	-.251**	-.243**	-.235**	-.003	.028	-.050	.014	-.032	-.068	-.004	.077	.079	.180*
IND_2	-.109	-.080	.019	.013	.016	-.325**	1.000	-.218*	-.211*	-.204*	-.097	.028	-.050	.014	-.032	-.068	-.004	.077	.079	.180*
IND_3	.086	.077	-.077	.018	.013	-.325**	1.000	-.218*	-.211*	-.204*	-.097	.028	-.050	.014	-.032	-.068	-.004	.077	.079	.180*
IND_4	-.010	.069	-.008	.035	-.137	-.243**	-.211*	1.000	-.163	-.158	-.041	.094	-.149	.098	-.081	.141	-.095	.142	.115	.084
IND_5	.160	.221*	-.098	.100	.014	-.243**	-.211*	1.000	-.163	-.158	-.041	.094	-.149	.098	-.081	.141	-.095	.142	.115	.084
LABMKT	.298*	.308**	.006	.184*	.006	.006	.006	.006	.006	.006	.006	.006	.006	.006	.006	.006	.006	.006	.006	.006
LN SERV	.610**	.315**	-.163	.207*	.155	.113	.208*	.001	.208*	.001	.208*	.001	.208*	.001	.208*	.001	.208*	.001	.208*	.001
LNSAL_96	.432**	.224	-.145	.044	-.050	-.008	.114	.021	.086	.115	.090	.090	.090	.090	.090	.090	.090	.090	.090	.090
MTG_GD	-.056	.011	.381**	-.028	-.086	.032	.119	.021	.086	.115	.090	.090	.090	.090	.090	.090	.090	.090	.090	.090
MTG_LK	.011	-.066	-.050	-.082	-.068	-.032	-.009	-.081	-.079	-.076	-.067	.049	.056	1.000	-.128	.069	.180*	-.122	.219*	.056
OCCCD	.381**	.069	-.008	-.027	.111	-.068	-.104	.141	.033	.103	.086	.075	.583**	.069	-.012	1.000	-.065	-.208*	-.074	-.054
ORGBD	-.028	.018	-.033	.031	-.029	.077	-.033	-.095	.182*	-.020	.220*	.078	-.051	.180*	.002	-.065	1.000	-.177*	.258**	.047
SEX	-.086	.016	-.005	.066	.079	.115	-.167	-.011	-.183*	.002	.115	.083	-.084	-.122	.118	-.208*	-.177*	1.000	-.145	-.024
UAVE	.032	.144	.114	-.005	.010	.180*	.084	-.213*	-.008	-.097	.090	.198*	-.017	.056	-.094	-.074	.258**	-.145	1.000	.619*
YEAR	.119	.247*	.021	.164	.010	.180*	.084	-.213*	-.008	-.097	.090	.198*	-.017	.056	-.094	-.074	.258**	-.145	1.000	.619*
Sig. (2-tailed)	.000	.000	.236	.079	.109	.642	.214	.327	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
AGE	.000	.236	.079	.109	.642	.214	.327	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
BDPERF	.236	.079	.109	.642	.214	.327	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
GDPERF	.079	.109	.642	.214	.327	.907	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
HIRING	.109	.642	.214	.327	.907	.907	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
IND_1	.214	.327	.907	.907	.907	.907	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
IND_2	.327	.907	.907	.907	.907	.907	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
IND_3	.907	.907	.907	.907	.907	.907	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
IND_4	.907	.907	.907	.907	.907	.907	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
IND_5	.907	.907	.907	.907	.907	.907	.907	.907	.907	.067	.001	.000	.000	.525	.998	.000	.747	.327	.719	.175
LABMKT	.001	.004	.046	.035	.958	.971	.269	.842	.447	.009	.009	.850	.351	.581	.385	.240	.822	.379	.785	.266
LN SERV	.000	.003	.062	.017	.000	.753	.235	.283	.637	.850	.063	.063	.042	.154	.574	.392	.377	.090	.342	.023
LNSAL_96	.000	.052	.114	.091	.990	.584	.105	.002	.060	.351	.220	.042	.544	.142	.142	.430	.039	.162	.012	.850
MTG_GD	.525	.467	.614	.196	.017	.877	.268	.835	.200	.581	.002	.154	.544	.142	.142	.430	.039	.162	.012	.850
MTG_LK	.998	.553	.566	.352	.436	.712	.914	.354	.369	.385	.442	.574	.158	.430	.893	.893	.986	.177	.281	.851
OCCCD	.000	.533	.929	.755	.206	.437	.236	.107	.710	.240	.325	.392	.000	.430	.893	.893	.986	.177	.281	.851
ORGBD	.747	.870	.184	.804	.381	.965	.709	.281	.028	.822	.011	.377	.577	.039	.986	.459	.459	.017	.398	.538
SEX	.327	.889	.707	.723	.746	.377	.104	.133	.036	.979	.439	.090	.002	.162	.177	.017	.042	.042	.003	.592
UAVE	.719	.191	.194	.959	.328	.368	.188	.055	.896	.785	.188	.342	.362	.012	.281	.398	.003	.096	.000	.000
YEAR	.175	.023	.810	.061	.913	.039	.340	.014	.928	.266	.306	.023	.850	.520	.851	.538	.592	.789	.000	.000

**, Correlation is significant at the 0.01 level (2-tailed).

*, Correlation is significant at the 0.05 level (2-tailed).

Correlation results indicate that NOTICE is correlated significantly in the positive direction with LN_SERV, AGE, LNSAL_96, OCCCD, and LABMKT (p-values = 0.001 or lower). NOTICE is also moderately positively correlated with GDPERF (good performance) and IND_5 (government and quasi-government organizations) at p-values of 0.079 and 0.067 (two-tailed) respectively. When EST_AGE and EST_LSAL were used to replace AGE and LNSAL_96 in Method II, the correlations between NOTICE and these estimated variables are basically the same as those for the original AGE and LNSAL_96 variables.

In performing the multiple regression analyses, attention was paid to the influence diagnostics to identify the outliers. Since the purpose of the analyses is to understand the determinants in normal circumstances and to help in future prediction, outliers should be excluded from the analyses. Cases with a high Cook's D value (closer to 1) and studentized deleted residual greater than |2| were examined. As mentioned above, 3 methods of regression analyses were used to handle the missing value situation. Method I uses listwise deletion for the missing values, Method II involves the estimation method (i.e., with AGE and LNSAL_96 missing values estimated), and Method III involves pairwise deletion. It was noted that the outliers related to each method might not be the same.

Under the listwise deletion method (Method I), only 76 cases remained after the missing value cases were taken out. One distinct outlier was identified and further excluded, leaving a total of 75 cases for the analyses. As for the estimation method (Method II), after a series of diagnostics, 5 outlying cases were excluded, leaving a total of 123 cases (132 less 4 cases not estimated and 5 outliers). These same 5 cases were identified as outliers in the pairwise deletion method (Method III). (See Appendix IV for brief descriptions of the outliers.)

For each regression method, first a full model was run with NOTICE regressed on all the explanatory variables. As no prior research has confirmed any industry effects, a second model was run without these industry variables so as to reduce the number of explanatory variables.

Third, a reduced model was run with only the significant factors included. Table 5-3 shows the regression results.

Table 5-3
Unstandardized Regression Coefficients from 3 Methods of Analysis
 (Dependent Variable - NOTICE)

	Method I (listwise deletion)			Method II (listwise with estimation)			Method III (pairwise deletion)		
	(a)	(b)	(c)	(a)	(b)	(c)	(a)	(b)	(c)
Constant	-59.74 ⁺⁺⁺	-45.33 ⁺⁺⁺	-37.91 ⁺⁺⁺	-31.73 ⁺⁺⁺	-28.59 ⁺⁺⁺	-25.32 ⁺⁺⁺	-29.40 ⁺⁺	-26.49 ⁺⁺	-26.45 ⁺⁺⁺
AGE	0.155 ^{***}	0.173 ^{***}	0.188 ^{***}				0.192 ^{***}	0.193 ^{***}	0.198 ^{***}
EST_AGE				0.145 ^{***}	0.162 ^{***}	0.177 ^{***}			
LNSAL_96	4.534 ^{***}	3.118 ^{***}	2.813 ^{***}				2.032 [*]	1.852 ^{**}	1.724 ^{**}
EST_LSAL				2.365 ^{***}	1.986 ^{**}	1.769 ^{**}			
OCCCD	0.525	1.026 [*]	0.887 [*]	0.922 ^{**}	1.013 ^{**}	0.958 ^{**}	1.081 [*]	1.173 ^{**}	1.163 ^{**}
LN_SERV	2.673 ^{***}	2.799 ^{***}	2.915 ^{***}	2.666 ^{***}	2.598 ^{***}	2.498 ^{***}	2.454 ^{***}	2.494 ^{***}	2.460 ^{***}
LABMKT	1.177	1.257 [*]	1.218 [*]	0.827	0.849	0.672	0.559	0.620	0.587
BDPERF	0.474	0.224		0.742	0.539		0.875	0.818	
GDPERF	0.798	0.957		0.105	0.070		0.050	0.074	
HIRING	-1.206	-0.549		-0.500	-0.447		-0.803	-0.545	
MTG_GD	-0.440	-0.286		-0.878	-0.746		-0.439	-0.273	
MTG_LK	0.240	-0.242		-1.783	-1.419		-0.765	-0.765	
ORGBD	-0.248	-1.068		-0.326	-0.494		-0.061	-0.348	
SEX	1.072	1.590		0.912	0.977		0.260	0.379	
UAVE	0.155	0.243		0.154	0.155		0.104	0.125	
YEAR	0.036	0.009		-0.004	-0.009		-0.013	-0.029	
IND_1	0.356			-0.251			1.087		
IND_2	0.518			-0.810			1.406		
IND_3	-0.241			-0.862			1.713		
IND_4	-2.794 [*]			-1.424			-0.314		
IND_5	2.571 [*]			0.220			2.037		
R ²	0.845	0.794	0.765	0.759	0.750	0.733	0.798	0.789	0.781
Adjusted R ²	0.792	0.745	0.748	0.715	0.717	0.722	0.727	0.738	0.765

(a) Full model with the industry variables

(b) Partial model with all variables except the industry variables

(c) Reduced model with only the most significant variables - AGE/EST_AGE, LN_SERV, OCCCD, LNSAL_96/EST_LSAL, and LABMKT.

*** p<0.001 (1-tailed)

** p<0.01 (1-tailed)

* p<0.05 (1-tailed)

+++ p<0.001 (2-tailed)

++ p<0.01 (2-tailed)

Note: The total number of cases is 132. For Method I, N=75 after removing one outlier. For Method II and III, 5 outliers were excluded. 4 more cases were also excluded in Method II due to the difficulty in estimation when both AGE and LNSAL_96 values were missing, resulting in N=123.

In Table 5-3, the first column of each method indicates a full model, the second a partial model excluding the industry variables, and the third a reduced model with only the significant variables. AGE/EST_AGE, LNSAL_96/ESTLSAL, and LN_SERV are consistently significant at either $p < 0.001$ or $p < 0.01$ levels. OCCCD is also consistently significant in all the analyses except under the full model of Method I in which industry variables were included. In this case, the coefficient is still in the direction predicted. It is noted that the inclusion of IND_4 in particular reduced the OCCCD coefficient's significance. The reason might be that relative to the other industries, IND_4 (for construction) has a relatively larger proportion of employees in the lower occupational groupings. Therefore, when a relatively short notice period was given, it could be due to the employee being in the construction industry or in the lower occupation levels. As such, the inclusion of the industry variable affected the OCCCD variable. In view of the small number of cases for each industry and the relative instability of their coefficients across the methods, the significance of the industry variables will need further corroboration. Therefore, it would not be advisable to exclude the OCCCD in favour of the industry variables, especially given the literature and past research support for OCCCD. Furthermore, the fact that the re-running of any of the regressions without LNSAL_96, another indicator for the employment status, always gives rise to very significant OCCCD coefficients supports the inclusion of OCCCD in the reduced model.

LABMKT is significant under the listwise deletion method without the industry variables. With the industry variables, it is moderately significant at p -value of 0.056 (1-tailed). Since the listwise deletion is the most commonly adopted regression method, LABMKT is included in the reduced model despite its non-significance under the other two models. Nonetheless, the coefficients of LABMKT in the various analyses all bear the same positive sign.

After the 5 variables in the reduced model were identified, further regressions were run with each of the other variables added one at a time to the model with those 5 variables. This is

just another step to confirm that no other significant factors have been missed, while keeping the number of variables low. The only additional variables found significant, again, are IND_4 and IND_5 under the listwise deletion method, which indicates they may be significant. Although they were not found to be significant under the other methods, the effects have been consistent across methods in terms of their direction. As mentioned above, there are very few cases for each of the industries analyzed. Therefore, further research will be needed to confirm such findings.

The correlations matrix shows that UAVE and YEAR are highly correlated. For this reason, further regressions for the full models and the full models less industry variables were run with each of the two variables entered separately. These variables have negligible effects on the other variables. Neither of the two variables reached the required level of significance for any of the regression methods. However, at least, the positive sign of the UAVE coefficients has been consistent across the three methods.

While GDPERF is correlated with NOTICE, it is no longer significant after controlling for all the other variables. The sign of its coefficient across all the regression methods, though, remains positive.

ORGBD was found to have consistent negative coefficients but the factor was not statistically significant at the 5% level. Similarly, SEX was found to be non-significant although all of its coefficients bear the same positive sign.

It was noted that there were not too many cases of special situations involving hiring, mitigation and bad performance, and none of these factors, HIRING, MTG_GD, and BDPERF, were found to be significant.

Overall, the models were able to explain the NOTICE variance very well, with an adjusted R^2 ranging from 0.71 to 0.79. Even the reduced models with the 5 variables, AGE/EST_AGE, LN_SERV, LNSAL_96/EST_LSAL, OCCCD, and LABMKT can explain

around 75% of the variance.

Next, interaction effects were examined among variables in the reduced models. Interaction variables were created for each combination of 2 factors (out of 5 factors), resulting in a total of 10 interaction variables. For example, the values of AGE and OCCCD for each case were multiplied together to form the value of the interaction variable AGE_OCC. Since there has been no literature or previous research that suggests specific effects, there is no prior assumption as to which interaction effects may exist, or which direction they will take. The stepwise regression method was used to select from the large number of interaction variables. Under the listwise deletion method, when 3 interaction variables were selected to be included in the model, only the main effect for LNSAL_96 remained. As interaction effects are not explainable independent of the main effects, these interaction effects were regarded as not adding to the explanatory power of the main effect models. Similar findings were obtained for the other two regression methods, that is, no significant interaction effects were found where the main effects remained significant.

Generally, across the three methods, the coefficient signs and significance of the critical variables are comparable. It may be noticed that the coefficients of LNSAL_96 for Methods II and III are somewhat lower than those of Method I. This is probably due to the fact that LNSAL_96 has a limited amount of variance and the differences in the coefficient magnitude were compensated by the changes in the constant term. Noting that the differences between the coefficients of the reduced models of Method I and II and of Method I and III are 1.044 and 1.089 respectively, if we multiply them by the mean of LNSAL_96, which is 10.94, the results are 11.4 and 11.9 respectively. These numbers are very similar to the differences in the constant terms between the models. In other words, despite the apparent differences in the coefficients of LNSAL_96 and the constant terms, all three reduced models give comparable results in predicting notice period decisions, especially for an average case.

Discussion

Consistent with prior studies, age, length of service, and salary level were found to be significant factors. The findings confirm that the longer the length of service, the greater the age or the higher the salary, the longer the notice period awarded. The employee's occupational level was also found to be significant in all but one of the analyses, indicating that a higher occupational level is also associated with a longer notice period. Despite the correlation between occupational level and salary, both variables are significant. This shows that both variables are influential in the sense that within one occupational grouping, there is a salary difference and that employees with a higher salary in an occupational grouping still tend to get higher awards than their counterparts at a lower salary point. Alternatively, for two employees of the same salary, the one with a higher occupational level (probably one with more responsibilities) tends to get a higher award than the one at a lower level. The results, therefore, supported H-A1 (i), (ii), (iii) and (iv), which propose a positive relation between the notice period, and length of service, age, occupational level, and salary respectively. As for H-A1 (v), or the presence of "lured into employment" or relocation on hiring to positively relate to the notice period, the results do not lend support. The effect was found to be not even in the direction predicted. This is probably due to the small number of cases involved in such hiring circumstances, chance occurrence, and the likelihood that such hiring factors are important in only cases where a termination occurs within a very short time frame of hiring.

H-A2 predicts that the notice award will be related to employee performance. There is no statistically significant evidence at the 5% conventional level to show the relation although the good performance (GDPERF) coefficients had a consistently positive sign. As there is a moderate positive correlation between this variable ($p\text{-value} = 0.079$, two tailed) and the notice period and listwise regression results (Method I, column (b)) give $p\text{-values}$ as low as 0.08 to 0.10 (one-tailed) for GDPERF, future studies may wish to focus on this variable. With an apparent shift in organizations towards efficiency, if the courts share any of such an organizational view, this factor

may gain significance over time. As for bad performance, there is no indication that this will lead to the lowering of the notice period. In fact, the direction of the effect is opposite to the effect predicted. This could be due to the small number of cases involving bad performance, which might not have allowed for the generation of stable and reliable results. However, a more likely explanation may be that it reflects the courts' general attitude against taking the middle of the road approach. That is, employee performance should only affect the decision of whether there is just cause or not, and once just cause has not been proven, the notice decision should be independent of employee performance. This is in line with the ultimate Supreme Court decision in (*Dowling v. Halifax (City)*), 33 Canadian Cases on Employment Law (2d) 239) that ruled out the role of "near cause" in notice period decisions.

H-A3 relates to the effects of mitigation efforts on the notice period. Neither good mitigation efforts nor a lack of mitigation efforts was found to be significantly related to the notice period. As the coefficients of good mitigation efforts actually have a sign contrary to prediction, it is likely that good mitigation efforts do not lead to any increase in notice. The small number of cases involving special mitigation efforts, however, makes any findings tentative. Two of the three coefficients for lack of mitigation are negative, which is in the direction predicted, but they are not statistically significant. Among the few prior empirical studies, the mitigation factor had only been studied by Wagar and Jourdain (1992). In that study, it was found that employees who had mitigated their losses and obtained new employment were given higher notice awards. The combining of the mitigation factor with finding of new job can lead to confusing results. The two factors can be independent of each other. A person could have tried everything to obtain a job without success. In McShane's two prior studies (1983 and 1987), finding a new job was not found to be a significant factor. In sum, the effect of mitigation effort on the notice period is still not clear and further research may be necessary.

H-A4 specifically looks at the relation of the unemployment rate on the notice period.

Despite the common belief that the notice period should be related to the difficulty of finding alternative employment and that unemployment rate is a good indicator of such a difficulty, unemployment rate was not found to be a significant factor. Its direction was consistently positive, as that predicted. It shows that judges probably did not take note of the unemployment rate to any great extent. This may be due to the generality of the unemployment rate. Since most cases mentioned only the court location but not the exact company location, applying the specific local unemployment rate for the analyses was not feasible. It is also possible that since judges are mostly in large cities, they may not know the specific local unemployment rates that should be applicable for the rural area cases. As the overall unemployment rate for the province might be regarded as too general, judges might tend to rely on case-specific situations as presented by the parties such as how many comparable jobs have been advertised and how many jobs the employee has applied for and been turned down. In this regard, it is not surprising to find support for H-A5. As predicted by this hypothesis, the variable LABMKT, which captures the case-specific labour market situation as revealed by the judges comments and other evidence presented (see Appendix III for detailed description), is significant. Yet, as compared with the prior research work, which suggests that this factor was gaining significance, the findings here seem to suggest otherwise. LABMKT was only found to be marginally significant under the listwise deletion method and non-significant under the other methods. As the labour market condition is often associated with the economy, it is likely that a poor labour market exists alongside a business downturn. According to the rights paradigm, the notice period is a right of the terminated employee that should be quite independent of the company's situation, and therefore, LABMKT should be a very significant factor. However, if judges consider the efficiency paradigm and look into the organization's financial well-being to grant the award, the award could be lower in a poor economic situation which may not be always separable from a poor labour market condition. In this analysis, while an attempt has been made to control for the effect of organizational performance (in terms of bad financial situation), there are

still limitations such as if the judges did consider the organizational performance criteria but did not make it explicit in their comments. In the future, if a shift from the rights to the efficiency paradigm occurs, LABMKT is likely to become a less significant factor.

Related to the discussion in the above paragraph is H-A6 which involves the bad organizational performance factor. If an organization is in financial trouble, it is expected that there might be some relief in its severance obligation, as some court decisions were known to have taken such a position. Here, though the factor does not reach statistical significance, its coefficients have been consistently in the direction predicted. No previous research has included this factor before. It would be interesting to see if there is any developing trend in this area. Further research may address this.

H-A7 hypothesizes that there are industry differences for the notice decision. More specifically, for the construction industry where there are seasonal fluctuations and employment is usually viewed to be of a less permanent nature, the notice period is expected to be lower. Conversely, a higher notice award is expected for government and quasi-government organizations which are usually fairly large, and unlike private organizations, are less likely to have ability-to-pay problems. In the analyses, while the construction industry was found to be associated with a shorter notice period and government and quasi-government organizations with a longer notice period under the listwise deletion method, the same conclusion cannot be drawn from the other two methods. In view of the limited number of cases for each industry, the findings highlight some possible industry differences. These, however, will require further corroboration.

Included in the analysis are control variables relating to the year of the decision and employee's sex. Prior research (McShane, 1983; Wagar and Jourdain, 1992) has indicated that later decisions were associated with higher awards. However, there are no explanations for such increases as it is the notice periods, not the absolute severance amounts that are being looked at and they should not be influenced by inflation. There are also a number of reasons, as mentioned in the

hypothesis section, to believe that the upward trend, if any, should have stopped. Findings here provide no evidence of any increasing trend at all. The year of the decision factor is not significant nor does it have a consistent sign when the unemployment rate is included. However, when the unemployment rate is excluded, the coefficient of the year of the decision factor becomes consistently positive, though not to the extent of being statistically significant. This finding supports the proposition that the significance of the year of the decision variable found in prior studies might have been due to the omission of the unemployment rate factor. So, it is probably the macro-economic unemployment situation that should have mattered rather than the year of the decision per se.

Similar to prior research, sex of the employee was found to be non-significant. If one has been expecting that there was discrimination against the female gender in the court decisions, the consistent positive sign of the coefficients (which means the notice period is more in favour of the female gender) should disconfirm the belief of such a sex discrimination.

In sum, similar to prior research, length of service, age, salary, and occupational level were identified as significant factors. The labour market condition is marginally significant whereas the unemployment rate is not. Contrary to previous studies, year of the decision is not a critical factor. There also seem to be industry differences especially for the construction industry, and government and quasi-government organizations. The consistent directions of the factors relating to good employee performance and organizational performance suggest that these factors should be further researched as there is the potential that they may gain significance with possible shift towards efficiency concerns. Overall, there are a number of interesting variables being studied here but due to the limited number of cases, future research along these lines is necessary. For the present study, the 5 factors in the reduced model are, no doubt, identified as the most significant factors determining the notice period decisions in Alberta for the period under study. These factors are therefore incorporated in the construction of the survey for the second part of this study.

Part B - Human Resource Perspective

Chapter 6

Conceptual Framework

Although litigation cases may seem to have been on the rise, most dismissal cases do not end up in courts (Rights Associates, 1996; Sooklal, 1987). They are settled directly by negotiations between the parties or settled out-of-court before a hearing. Therefore, an analysis of only the court decision presents only part of the picture of wrongful dismissal and human resource practitioners' severance compensation decisions actually affect most terminated employees more directly. So far, empirical work on practitioner decisions regarding notice period determination has been done mostly by consultants, often involving only a list of factors and percentages of practitioners using such factors. Little is known about their decision criteria, the rationale, and the weighting of the various determinants in their decision. Although the reports may also outline some general formulae used, very few factors are usually involved, and as such, there is a lack of comprehensiveness. This study intends to make a pioneering attempt to fill the void and explore these areas. Without any systematic theoretical or empirical research in this human resource area, there is really no readily available conceptual framework that can be "plugged-into" this part of the study. Therefore, in this chapter, such a framework will be developed.

If one considers that the determination of notice period is a complex decision from the legal perspective, it is bound to be more so in an organizational setting from the HR perspective. The legal perspective presented above is likely to be only one of the many facets that may influence the HR decisions. Mitroff (1983:xii) considers that real life problems in organizations have many dimensions, many forces are at work and many different values in conflict. For example, a manager must deal simultaneously with distant external forces (stakeholders) and deep internal personal forces, all reflecting aspects of the past, present, and future. Severance

compensation policies obviously fall within this category of real life organizational problems that are affected by many forces and have wide implications. It is therefore, very unlikely that a simple theory could suffice to fully explain such circumstances and a multi-theoretical approach is probably more appropriate. Dising (1962) suggests four different types of rationality in decision-making, namely, (1) social, (2) legal, (3) political, and (4) economic. In the following theoretical discussions, similar broad approaches relevant to the severance policy will be used. These approaches relate to four aspects - legal, economic/financial, social, and individual decision-makers' characteristics. It should be noted that while theories under each approach may have different emphases, they may not be mutually exclusive of each other. It is possible that some decision criteria can be simultaneously explained by more than one theoretical perspective.

Since this part of the research on HR decision is exploratory in nature, it is important that the hypotheses are set not only with theoretical support, but also based on qualitative information supplied by HR practitioners in real life settings. The latter information was obtained by semi-structured interviews with 13 HR practitioners in various industries, including, manufacturing, construction, oil and gas, consulting, mining, financial services, retail, public utility, biochemical, and forestry. They had HR experience ranging from 3 to over 40 years, with the majority at 10 or more years and holding senior positions, e.g., directors and regional managers. Although it is a convenience sample out of Edmonton, they can be regarded as generally representative of the HR managerial population due to their diverse backgrounds, both in terms of industry and experience. The purpose of the interviews was to see what these practitioners consider as important determinants in their severance compensation decisions so that potentially critical factors would not be missed in the analysis. In determining the number of interviews, consideration was given not only to the number of major industries that should be represented, but also to when the interview information reached a "saturation point", i.e., when the latest interviews did not seem to provide additional important pieces of information.

Having hypotheses established based on both theory and preliminary qualitative information rather than theory alone is believed to be a more comprehensive approach that can lead to better understanding of the relationships, especially when this HR severance compensation perspective has not been rigorously researched. In the following discussion of the theoretical approaches, comments from practitioners that are relevant to the theory or factors being discussed will be incorporated as appropriate.

Legal Approach

In the previous analysis of legal literature and common-law court cases, it was found that among the various potential factors that may influence severance notice periods, the length of service, occupational level, salary, age, and labour market condition are critical determinants. It is expected that HR practitioners must take into consideration the legal requirements in order to avoid any potential costly litigations. According to Bies and Tyler (1993), managers in organizations are confronting what many perceive as a “litigation mentality” in today’s workplace. There have been observations across functional areas in diverse organizational settings supporting the notion that organizations are becoming more legalistic and that legal considerations are receiving more attention and more weight in organizational decision-making (Sitkin and Bies, 1994). In the interviews with HR practitioners, most expressed their knowledge and concern with legal precedents. Legal counselling was also sought by the majority of the interviewees especially for cases involving larger amounts of settlement. One practitioner summarized the fundamental importance of the legal aspect by saying, “underpinning it all [i.e., the set of decision criteria] is to meet basic legal requirements.” As such, it is hypothesized that:

H-B1: All else equal, (a) length of service, (b) age, (c) occupational level, (d) salary, and (e) labour market condition, are critical factors under the HR perspective.

Although legal considerations deserve much attention, overemphasis on the legal acceptability in decision-making can sometimes be at the expense of other important criteria such

as economic, humanistic, and the like (Sitkin and Bies, 1994). For example, strict rule and precedents-adherence restricts managerial discretion that may be required in response to a changing environment for greater efficiency and effectiveness. Besides, when managerial decisions are dominated increasingly by a concern for what is “legal” at the expense of humanistic and social considerations, such as justice and fairness, it gives rise to a paradoxical situation of “law without justice” (Barney, Edwards and Ringleb, 1992; Ewing, 1989.) Therefore, it is important to understand that there are other important criteria for decision-making in organizations in addition to the legal considerations. Below are some of the other decision approaches.

Economic and Financial Approach

Various economic and financial theories may be applicable to severance compensation decisions.

Cost/Benefit Optimization

Under the economic rationality, decision-makers are generally regarded as maximizers of returns and minimizers of transaction costs. Economic efficiency is paramount. For example, transaction cost theory assumes efficiency overrides equity, distribution, and use- and abuse-of private power (Miller, 1993:1049). Accordingly, economically rational decision-makers would view severance compensation as an economic exchange and pursue cost minimization in the transaction. Swift (1983) suggests that the severance compensation offered by organizations may be the expected value of the court settlement less the litigation costs to the employee. Although HR practitioners interviewed generally considered their severance decisions generous, there is some support for Swift’s proposition. One practitioner actually did not hesitate to admit that the formula they tended to use was a little less than what the employee would get if they had gone to court, but not so much less that it would cause the employee to litigate. Accordingly, it can be expected that:

H-B2: All else equal, the notice period awarded by the HR practitioners will be shorter than that awarded by the courts in a given circumstance.

Risk and expected values are integral elements in economic decisions. Decision-makers will choose the option that will give the greatest expected return. Expected return or expected cost, in turn, is dependent on the probability or risk of certain occurrences. In severance compensation, HR practitioners are generally aware of the large amount of money and time that litigation may take, as revealed by the interviewees' comments. It can be expected that if the perceived risk of litigation is high and practitioners can have a choice of giving a higher or lower award, they would opt for the higher award to reduce the risk of potential litigation. While some HR interviewees were confident that their settlement offers were generally fair and reasonable enough that they should not be influenced by the level of risk of litigation, others agreed that severance compensation was, nonetheless, a business decision, and if increasing the notice award by a slight margin was going to reduce the risk of costly litigation, they would do so. Quite a few interviewees agreed that it was a balance between one's principle and business, and one went further to acknowledge that "at the end of the day, it does come down to dollars and cents." Thus,

H-B3: All else equal, the notice period awarded by HR practitioners will be longer when the perceived risk of litigation by the employee is high.

Ability to pay

From the financial perspective, organizational decisions are not only affected by economic efficiency, but also the organization's ability-to-pay. Numerous research studies have found that, in particular, an organization's compensation policy or wage level is determined in part by its ability-to-pay (e.g., research on school districts (Lentz, 1998), airlines (Nay, 1991), restaurant business (Young and Kaufman, 1997), and non-profit organizations (Werner and Gemeinhardt, 1995)). In Levine's (1993) study on 139 executives, not only did he find

quantitative support that higher ability-to-pay as indicated by recent productivity growth led to recommendations of higher wage increases, he also confirmed that respondents in his supplementary in-depth interviews stated that ability-to-pay affected compensation. One went so far as to state, “Today the greatest consideration in determining wages is the ability to pay. We refer to the market conditions, equity, etc., but the final question is ‘Can we afford this?’” (Levine, 1993:1252). There is no reason to expect the ability-to-pay influence to be otherwise for severance compensation. In the HR interviews, the ability-to-pay factor was regarded as relevant by 11 out of the 13 interviewees, and to a few, it was of great significance. The question comes down to what the organization can afford, is there enough money, and what the budget constraints are. When money is tight, apparently cost/benefits analysis would need to be done more thoroughly and as a practitioner said, one “would do a business case rather than just buying the person off”. The same practitioner informed that their organization’s severance packages were not as rich as, say, 5 years ago, because of the financial considerations. Most interviewees agreed that this financial factor would become more important when many layoffs were involved. Therefore,

H-B4: All else equal, the notice period awarded by HR practitioners will be shorter when the organization’s financial situation is tight.

Human Capital Theory

Another economic theory that is applicable to severance compensation is the human capital theory (Mehmet, 1975). The theory was introduced by Becker (1964). In essence, the theory says that employees, as well as employers, invest in their human capital, expecting a higher return in the future employment relationship. Any expenditure on a human being that increases his/her future productivity is an investment in human capital. These investments include formal education, on-the-job training, human migration, and health services (Kiker, 1966). Numerous studies have demonstrated that employees invest in firm-specific training,

expecting a greater future return (e.g., Becker, 1975, Carmichael, 1983; Chiang, 1990; Hashimoto, 1979; Mincer, 1962; and Strober, 1990). The eligibility for future extra returns for the employee can also be viewed as a property right of the employee resulting from his/her long-term investment, and as such, should be compensated for when the right is taken away (Mehmet, 1975). Anton (1972) suggests that firms and workers may have endorsed deferred wage and seniority rules, which give higher future returns, to reduce turnover uncertainties and enhance efficiency. Empirical evidence also has shown that wages and benefits tend to have a positive relation with seniority (e.g., Topel 1991). Therefore, when an employee is involuntarily terminated prior to his/her receiving the full share of future benefits for prior specific investments, it is a loss that should be compensated in proportion to the amount of investment outlay or the loss in yield of the investment.

Measures of employees' investment outlay generally include the length of service, occupational level, and salary. Length of service is a good proxy of the duration of on-the-job training an employee has received and the amount of firm-specific human capital accumulated. Such firm-specific skills may hinder the employee's future employment opportunities and adversely affect the yield. Position and salary are good indicators of investment assuming that an employer will reward an employee who puts in great effort in his/her job and who has been willing to loyally learn firm-specific skills by promotion and/or salary increases.

Gender is also a common factor considered in the human capital theory. The argument is that married women tend to spend less effort on each hour of work in the labour force than others due to their effort-intensive child care and housework responsibilities. Married women may also seek less demanding jobs (Becker, 1975) and are more likely to exit the workforce due to pregnancies and family responsibilities. As such, human capital accumulation for women is assumed to be generally less than that of men, and the level of compensation for their termination should be lower accordingly. It should be noted that this is a rather crude indicator based on

stereotype. Better indicators, if available, such as the number of exits from the workforce, the marital status, performance, and hours of work, etc. should be used instead.

To summarize, the human capital theory predicts:

H-B5: All else equal, notice periods awarded by the HR practitioners will be longer

- a) the longer the employee's length of service;**
- b) the higher the employee's occupational level;**
- c) the higher the employee's salary level; and**
- d) if the employee's gender is male.**

It should be noted that the above hypotheses (a) to (c) echo those under the legal approach. It is quite possible that the reasoning of this theory may have underlain the legal decisions but as underlying reasons for legal decisions are often not made explicit, it cannot be known what general theoretical approaches, if any, judges might have used.

In the interviews with HR practitioners, many referred to some sort of formulae they use which involves the length of service and occupational level. Interestingly, there has been no explicit mention of using salary level to determine the notice period. However, within an occupational level, there are salary differences. With organizations becoming flatter with fewer hierarchies, it is possible that salary may play a more important role in determining an employee's employment status in the organization. It is, therefore, included in the hypothesis testing. As for gender differences, all the interviewees said that they, themselves, would not use it as a determining criterion. Yet, some believed that gender might affect some other practitioners' decisions. One interviewee went as far as saying he believed that there was systematic bias out there against woman because often, they were regarded as being not the bread-winner. Another practitioner agreed that bias and discrimination probably existed. Otherwise, there would be no need for the Human Rights Commission. It appears that gender may play a role depending on what the decision-maker thinks of that gender and of the use of

wages earned by that gender in general. Prior research has also confirmed that females lag behind males in pay and career progression even when relevant firm and individual characteristics were controlled for (e.g., Gerhart, 1990; Morrison and Von Glinow, 1990; and Stroh, Brett, and Reilly, 1992). On the other hand, arbitrator decisions have indicated some preferential treatment towards female grievors (Bemmels, 1988a, 1988b, 1991). These arbitration studies show that the gender effect may not be in the same direction as that predicted by the human capital theory, but gender is, nonetheless, an important factor to be included in the analysis.

One of the problems with the economic and financial approach is that it focuses too much on the monetary aspect with little or no reference to the social and humanity issues such as justice. It may also be unrealistic to assume that everything can be expressed in a formula or equation with optimum solutions. In the next two sections, other considerations are explored.

Social Approach

One of the primary concerns of social researchers in decision-making is justice. As Rawls (1971:3) says, "Justice is the first virtue of social institutions, as truth is of systems of thought." Beverly and McSweeney (1987:5) define justice as "fairness in the relationships between people as these relate to the possession and/or acquisition of resources based on some kind of valid claim to a share of those resources." While legal justice concerns the punishment of wrongdoing and the compensation of injury through the creation and enforcement of a public set of rules (the law), social justice concerns the distribution of benefits and burdens throughout a society (Miller, 1976), or a social system of which an organization may be regarded as one (Mitroff, 1983). As such, social and organizational factors, in addition to legal concerns, may determine what a just distribution is in an organization. Three social justice principles have been widely used in decision-making, namely, equity, equality, and need (Deutsch, 1975). Under the equity principle, outcomes should be distributed among individuals in proportion to their inputs

or contributions (Adams, 1965). According to the equality principle, people are created equal and thus should be treated equally. The concept of equality, however, can be defined in various ways ranging from totally egalitarian distribution without regard to the situation or personal characteristics, to a distribution that deliberately avoids generalized, situationally irrelevant evaluative comparisons of people with the purpose of keeping invidious distinctions to a minimum (Deutsch, 1985). Equality can also be considered as the degree to which different levels of input lead to minor or no differences at all in outcome allocation (Volgelaar and Vermunt, 1991:103). The third principle - need - rests on the assumption that individuals deserve the basic human goods that are required to fulfill their fundamental needs and they do not have to earn them (Deutsch, 1985). As such, resources should be distributed according to the needs of the individuals, thereby, taking into consideration the individuals' circumstances.

Deutsch (1985:38) reiterated his earlier proposal (1973) that the application of different justice principles may be associated with different goals: the equity principle with economic productivity, equality principle with fostering or maintenance of enjoyable social relations (membership solidarity), and need principle with the fostering of personal development and personal welfare (member well-being).

As Folger, Shappard, and Buttram (1995:271) pointed out, "Organizations could not function if the three social goals of membership retention, productivity, and member well-being were not met." Thus, one can expect that in organizational decisions, more than one justice principle may be applicable. It is noted that while the equity principle is obviously quite distinct from the other two principles, the equality and need principles seem to "stand in a peculiarly intimate relationship to one another which is still less than an identity" (Miller, 1976:149). This is because one way of viewing the principle of equality is that it does not demand that each person should receive the same physical treatment, rather that each person should be treated in such a way that he/she achieves the same level of well-being as every other. In other words, the

premise which underlies distribution according to needs also underlies equality in the broader sense, and any attempt to drive a wedge between these two principles is misguided (Miller, 1976:149). Therefore, in the remaining part of this theoretical section, the focus will be on the equity and need principles only with the latter assumed to incorporate the equality principle in its broad sense.

Equity Principle of Justice

The equity principle is quite similar to the previous discussion under human capital theory of the economic perspective. Under the human capital theory, the focus is on human capital investments, whereas under the equity theory, the term used is contributions. Contributions are inputs over which a person is considered to have control (Volgelara and Vermunt, 1991:102). They may occur in the present or the past and are generally regarded as relevant when they are seen to provide outcomes of value. Under this principle, one can expect an employee's length of service to be a contribution to the organization, especially when years of devoted service have helped in the organization's growth and productivity. Occupational level and salary, per se, are not contributions themselves, but are rewards reflective of past contributions. Hence, under the equity principle, the same hypotheses as specified in H-B5 (a) to (c) can be derived. As for gender, it is a personal characteristic, not a voluntary action that leads to value, and should not deserve special allocation attention by itself. Equity theorists seem to have been less explicit than the human capital theorists in relating gender to the contribution/investment issue.

The equity principle of justice goes beyond the human capital theory in its attention to the issue of attribution. To the extent that equity theory places emphasis on the differentiation between actions that are within or without an individual's control, it makes sense to provide a lower award to a person whose fault leads to his/her termination than to a person terminated for reasons beyond his/her control, such as organizational restructuring. People who feel they are

getting less than they deserve in a relationship may feel differently about the mistreatment if they see this inequity as due to their own ineptness, chance, or deliberate plotting of others to deprive them. Inequities that are intentionally caused, that arise from reasons within the person perpetrating the inequity, may be more distressing than inequities that can be attributed to the “victim” himself/herself (Utne and Kidd, 1980). To the employee terminated for performance-related reasons, while the initial perception of inequity may continue to exist if he/she is awarded less notice than others who are terminated for non-performance related reasons, the level of distress experienced might be lowered when the locus of causation is reviewed. Thus, reason for termination may be a factor influencing the severance notice decision.

Most HR practitioners interviewed were aware that there is always a range to the notice decision - be it in common law courts or in organizations. Within the bounds of consistency and legal obligations, many of them will try to give a more generous award to employees leaving for non-performance related reasons than employees terminated for performance-related reasons. That is, they may go to the higher or lower end of the scale they perceive as appropriate depending on the termination reason. “I’ll go the extra mile” or “I’ll bend over backwards for them [the employees]” were the words used by some practitioners referring to layoffs of people who “just happened to be in the wrong place at the wrong time”. Rights Associates have also shown in their studies that one of the factors affecting severance compensation is the reason for termination (Raices, 1992; Rights Associates, 1996). Hence,

H-B6: All else equal, notice periods awarded by the HR practitioners will be shorter for employees terminated for performance than those terminated for non-performance related reasons.

Need Principle of Justice

Under the need principle, rewards should be given according to what can meet the basic needs of the individual, without regard to the input or other situational factors such as fault. The

greater and more urgent the need, the greater the allocation should be. From this perspective, the personal circumstances of the individual terminated from employment should be taken into consideration when deciding on the notice period. In the HR interviews, one practitioner was of the view that decision-makers might not always be aware of the terminated employee's personal situation especially in a large organization, and thus, believed that personal hardship would unlikely be a factor of consideration. However, a number of other practitioners were of the opposite view. For example, some saw the organization as having a moral obligation to take care of their employees while some personally felt they should try to help the needy employees if possible. As such, they would take employee hardship into consideration in the severance compensation. One interviewee openly acknowledged, "Family circumstances are important to us ... There is a compassionate element in there." The overall sentiment towards people with hardship and without can be reflected in the following interviewee's comment: "If you are a young woman out there with three kids and you just can't make it, then [people] will be a whole bunch more generous [to you] than someone going to Las Vegas every weekend." Therefore, it is expected that:

H-B7: All else equal, the notice periods awarded by HR practitioners will be longer when the terminated employee is perceived to suffer a high degree of hardship resulting from the termination.

Similarly, when an employee is terminated at a time when the labour market condition is poor, the employee is unlikely to be able to obtain a new job soon. As wages are often seen as a source of a livelihood for many workers, in an unfavourable labour market situation, the employee may be perceived to be in greater need of a higher compensation and awarded as such accordingly. Without exception, all the HR practitioners interviewed considered this factor to a various extent, albeit the consideration may arise more out of the recognition that courts

generally do take into account of this factor than the concern for employees' needs, but the two rationales are inextricably intertwined as the latter might have served as a basis for the former.

H-B8: All else equal, the notice periods awarded by HR practitioners will be longer when the labour market condition is unfavourable to the employee.

There was a general recognition by HR practitioners interviewed that courts had been taking this factor into consideration and that older workers often did have more difficulty in finding new employment than younger ones. As one HR practitioner said, "because of their age, [older workers] won't get a job in their application." This may be due to the assumption that older workers are less productive as certain skills have been shown to deteriorate with age (Hebbink, 1993), the belief that it is not worthwhile to train a new elderly employee as the yield period for the investment will be relatively short, or pure age discrimination. Whatever the cause, there may be greater need for the older workers to be compensated more than the younger ones in a severance situation to tide them over the period of unemployment. Hence,

H-B9: All else equal, the notice periods awarded by HR practitioners will be positively related to the age of the terminated employee.

An organization is a social system with its climate, culture, and norms. Its culture consists of the organizationally relevant beliefs and values that are mutually understood and subscribed to by its members (Weatherly and Beach, 1996). Research has also consistently suggested that decision-making managers act primarily as promoters and protectors of the organization's values rather than as relentless seekers of maximal payoffs (Donaldson and Lorsch, 1983; Peters, 1979; Selznik, 1957). As such, one can expect HR practitioners' decision-making in an organizational setting to be largely influenced by the organizational culture. One of the facets of climate/culture is the organization's concern for its people (Jennings and Wattam, 1998). In other words, does the organization show an interest in the individual's welfare? Research has shown that a high concern for others is related to less value and emphasis being

placed on cost-benefits calculations and personal outcomes of the decision-maker (Korsgaard, Meglino, and Lester, 1996; Simon, 1990, 1993). It is proposed that where the organization's concern for its members is high, HR decision-makers are more inclined to help the employees even if it may mean a higher cost to the organization. Further, if staff relations are a concern, organizations will not want to be involved in severance decisions that will result in conflict between managers and workers, employee distress, and litigation. In the interviews with HR practitioners, there was the consensus that the organization's culture should and would determine the direction of severance compensation decisions. The notice awarded would likely be greater if the organization had in its culture an emphasis on the concern for employees rather than the financial bottom line. Like a practitioner said, "If you are a hard-nose minimum wage, union employer, chances are you are going to reflect that culture in your termination bid. You are going to pay minimum amounts." Thus,

H-B10: All else equal, the notice periods awarded by HR practitioners will be longer if the organization has a high concern for its employees and staff relations.

Institutionalized Formulae

Although courts tend to emphasize that each severance compensation case is different and no generalization should be made, apparently, there seems to be a deep-rooted organizational belief that some rule-of-thumb formulae are appropriate. In an organization, it can be expected that often-practised assumptions and beliefs may at some time become institutionalized and taken-for-granted as legitimate. Murray Axmith and Associates recently surveyed 1,014 Canadian companies and public-sector organizations and found that organizations tended to use severance formulae, the most common formula being one month's pay per year of service, followed closely by 3 week's pay per year (Maclean's, 1997). Popular human resource management manuals (e.g., Agarwal et. al, 1983 - loose leaf updating), also suggest some minimum criteria based on the length of service for different occupation groups, such as, 1 1/2

weeks per year of service or a minimum of 1 month's notice for clerical or administrative support staff, 2 weeks per year of service or a minimum of 3 months' notice for technical, supervisory and middle-management personnel, 4 weeks per year for service for senior management, and 1 week per year of service for non-unionized hourly employees. Not surprisingly, many HR practitioners may rely on such formulae without much regard for other factors including those other factors that may be considered by legal professionals. As such, the institutionalized formulae may cause HR practitioners to place significant emphasis on the length of service and occupational status irrespective of the findings from legal analyses. Hence,

H-B11: All else equal, the length of service and occupational status factors are the two most important variables in explaining the notice period decisions of HR practitioners.

Individual Decision-Makers' Characteristics

The above theoretical discussions have been focussed on the factors relating to the terminated employees, the organization, and/or the situation (such as the labour market and the reason for termination). One aspect that has not been incorporated is the decision-makers' characteristics. Even if the allocation principles have been agreed upon by different decision-makers, it is likely that their decisions will not be entirely the same. As the equity theory critics often say, "equity is in the eyes of the beholder" (Utne and Kidd, 1980). Similarly, Beach and Mitchell (1996:3) pointed out, "Each decision maker possesses values, morals, ethics and so on that define how things should be and how people ought to behave ... the decision maker has an agenda of goals to achieve - some are dictated by his or her principles." It is, therefore, to be expected that individual differences may play a role in the severance compensation decision. As such, it is important to control for such potentially critical factors in the analyses in order that the effects of other variables can be interpreted correctly.

When it comes to individual characteristics, it is common in research to include demographic variables as control variables. Gender is usually a factor included. Research has shown that gender differences exist in allocation behaviour, for example, the equality principle seems to be more popular among women than among male allocators (Major and Deaux, 1981). In arbitration research, arbitrators' gender has also been found to be associated with different decisions (Bemmels, 1988b).

A decision-maker's view is a product of his/her social-psychological environment. Through experience, he/she develops certain habitual ways of viewing his/her organization and coping with its problems (Mitroff, 1981). Interviews with the HR practitioners also confirmed that they believed possible differences in decisions exist due to the decision-makers' experience. Some practitioners suggested that the less experienced decision-makers would likely "go by the books", that is, they would refer to some established formulae or past precedents in order to play safe or shift responsibility. An interviewee suggested that their risk aversion behaviour may be due to the thinking that "[i]f I screw up now, I might screw up my career if I make a bad [decision]." The more experienced practitioners, on the other hand, are usually more knowledgeable. As such, they tend to have more flexibility and dare to venture more to go with what they consider appropriate but which "might be at odds with what the corporate policy or general guidelines might be." Moreover, there is always the assumption that cognitive ability limits the number of cues/factors one can incorporate in a decision model (March and Simon, 1958; Mitroff, 1981). It is possible that such cognitive ability may improve with experience and that the more experienced practitioners can use more complex decision models. There has also been the suggestion from the HR practitioners that the less experienced practitioners may not always know what they are doing and their decision models may tend to be less consistent. Research also provides support that novices are less adept at decomposing complex problems in meaningful ways (Voss and Post, 1988) and tend to underestimate the complexity of difficult

problems, hence the accuracy of their best estimates decreases in complex situations (Spence, 1996). All these point to the importance of having experience-related individual characteristics included in the analyses. In this study, such characteristics include the number of years the decision-maker has been in HR, their level of position in the organization, their age (which should reflect personal experience in a broader sense than just HR experience), their level of involvement in severance compensation decisions, and whether they have the Certified HR Professional designation.

As a person's own value system likely shapes the principles he/she will use in decision-making, it is expected that the person's priorities or objectives in severance compensation will affect the decision. Interview information with practitioners generally indicated that fairness to the employee, and to the organization as well, was important. The trick is what the right balance is. Practitioners also tend to avoid litigation that is costly, time-consuming and which may affect the image of the company and the decision-maker. It would appear that a decision-maker who is most concerned about avoidance of litigation would choose a severance settlement that is more generous, in order to reduce the litigation risk. Also, a decision-maker who is most concerned about helping employees would likely provide a higher severance compensation than one who is most concerned about fiscal responsibility to the organization. As such, these three objectives of severance compensation - litigation avoidance, helping employees, and being fiscally responsible, will be included in the subsequent statistical analyses.

A person's socio-psychological environment that shapes his/her view undoubtedly includes his/her working environment - the organization. Although the research plan here is to have respondents make decisions for given circumstances independent of their own organizational characteristics, it is expected that these organizational characteristics might have already been incorporated into the decision-makers' own judgment principles. For example, a manager who has worked in a large organization which can be generous in severance

compensation may consider that to be the norm. Similarly, a manager who has worked in a certain industry for a long time may consider that industry's customs and norms to be generally applicable in other settings. Legal literature (e.g., Levitt, 1992) has suggested that industry's custom and norms affected severance decisions in courts and people tend to believe that the obligation to provide severance compensation is less for industries with seasonal or cyclical fluctuations. This may all be tied to the concept of breaching the implicit indefinite hiring contract term. There may also be a difference between decision-makers who work in a blue-collar setting and those in a white-collar setting, as the former usually involves workers paid by the hour, and the severance formulae widely accepted by HR professionals for such workers generally provide less compensation (Agarwal et. al, 1983). Therefore, the size and industry type of the decision-makers' organization will also be included as control variables in the analyses.

Summary

All the above theoretical discussions suggest that severance compensation may be predicted by various factors under different theoretical assumptions. Severance decisions are complex and may have multiple dimensions, involve multiple values, and should be addressed by a multi-disciplinary approach. The following table (Table 6-1) provides a summary of the hypotheses made on the HR perspective, their direction of prediction on notice periods, and the source of theoretical support.

Table 6-1
Summary of Hypotheses under the HR Perspective

Factors of Interest	Hypothesis No.	Relation with Notice	Theory Source
Length of service*	H-B1(a) H-B5(a)	+ +	- legal approach - human capital theory; - equity principle of social justice
Occupational Level*	H-B1(c) H-B5(b)	+ +	- legal approach - human capital theory; - equity principle of social justice
Salary	H-B1(d) H-B5(c)	+ +	- legal approach - human capital theory; - equity principle of social justice
Age	H-B1(b) H-B9	+ +	- legal approach - need principle of social justice
Poor Labour Market Condition	H-B1(e) H-B8	+ +	- legal approach - need principle of social justice
Personal Hardship on Employee	H-B7	+	- need principle of social justice
Company's concern for employees and staff relations	H-B10	+	- organizational culture literature - need principle of social justice
Risk of litigation	H-B3	+	-cost/benefit optimization and risk theories in economics literature
Poor company's financial situation	H-B4	-	- ability to pay theory in economics literature
Reason for termination	H-B6	- (for performance-related reasons)	- equity and attribution theories under social justice
Gender	H-B5(d)	- (for females) (however, arbitration literature suggests the direction may be otherwise)	- human capital theory
HR_dummy (dummy variable for HR cases; see Chapter 9)	H-B2	-	- cost/benefit optimization e.g., transaction cost theory in economics literature

* These factors are expected to be the most important variables used by HR practitioners in explaining the notice decisions (H-B11) due to the adoption of institutionalized severance formulae in organizations.

Other than the factors in the table that will be the focus of the analyses (i.e., the factors that will be manipulated in the research), individual decision-makers' characteristics that may affect the decisions will also be included as control variables. These include the decision-makers' gender, age, HR experience, involvement in severance compensation, position level, possession of professional designation, value system (main objective of severance compensation), as well as the size and industry type of their organization.

Chapter 7

Data and Methodology

Methodology

A policy-capturing approach is used to find the decision criteria of HR practitioners when awarding notice periods (Slovic and Lichtenstein, 1971). It is a statistical strategy that analyzes decisions, ultimately providing a mathematical description of the judgment policy that was used. A major objective is to develop models of the specific processes on how decision-makers use, weight, and combine different pieces of information (Donnelly and Bownas, 1984). The approach has been used for decades in various decision-making areas such as strategic management decisions (e.g., Tyler and Steensma, 1995; Hitt and Tyler, 1991; Stahl and Zimmerer, 1984), compensation (e.g., Deshpande and Schoderbek 1993; Deshpande and Schoderbek, 1992; Viswesvaran and Barrick, 1992; Sherer, Schwab and Heneman, 1987), performance management (e.g., Waller and Novack, 1995, Zedeck and Cascio, 1982; Hobson, Mendel and Gibson, 1981), recruitment and promotion (e.g., Graves and Karren, 1992; Mazen, 1990; Stumpf and London, 1981), termination perception, as well as discipline and grievances (e.g., Blancero, 1995, Klaas and Dell'omo, 1991; Rousseau and Anton, 1991; Klaas and Wheeler, 1990).

A common technique in this approach is to develop a survey with different scenarios, each combining different levels of cues (factors). Respondents are then asked to provide a decision for each scenario. Such a decision serves as the dependent variable and the different levels of cues represent the values of the independent variables. Since it has been found that non-linear or interaction effects usually account for only a small portion of the variance explained in judgment decisions (Hoffman, Slovic and Rorer, 1968; and Slovic and Lichtenstein,

1971), a survey designed to capture only the linear dimensions using multiple regression analysis is considered adequate for this part of the study.

A survey was constructed with hypothetical scenarios for the respondents to read and then indicate a decision. The use of common hypothetical scenarios allows for a consistent comparison among decision-makers and avoids the unnecessary concerns of providing actual sensitive and confidential employee information.

The Survey

The survey instruction page contains the definition of various terms and how the survey should be completed. In particular, wrongful dismissal was referred to as the situation of an employer-initiated termination in a non-union setting which is (a) not for just cause and (b) not in accordance with any prior termination arrangement agreement. In such a situation, the employer is liable under common-law to provide a reasonable notice of termination. Notice period refers to the amount of time between the termination notification and the actual termination date, or the equivalent pay for that period in lieu of notice.

The survey consists of scenario settings, each with 11 variables, with values assigned to create different combinations. The variables were considered to have the potential of being significant from a theoretical perspective, an analysis of wrongful dismissal court cases, and interviews with HR practitioners. (These factors are listed in Table 7-1.) Respondents were asked to provide the reasonable notice period as they considered appropriate for each set of circumstances. In making the notice period decisions, respondents were asked to assume that (a) they were an HR consultant advising in a general non-union setting, (b) they were not tied to any one particular organization, (c) there were no prior specific contractual/policy constraints, and (d), they were free to make any recommendation in light of the scenario circumstances.

Table 7-1
Variables used in the Survey Scenarios

Variables Names used in scenarios	Variable Abbreviations	Descriptions
Length of service	LNSERV	Employee's length of service in years. In the statistical analysis, a natural log transformation is used to achieve a more normal shaped distribution required for regression analyses.
Occupational level	OCC	Employee's occupation level coded: 1 = non-supervisory (e.g., clerical, sales) 2 = supervisory (i.e., non-management supervisors) 3 = middle/junior management 4 = senior management These are mutually exclusive categories in ascending order of the job status or level of responsibilities.
Salary	LNSAL_98	Employee's annual salary at 1998 dollar level. In the statistical analysis, a natural log transformation is used to achieve a more normal shaped distribution required for regression analyses.
Age	AGE	Employee's age
Labour market condition	MARKET	The labour market condition for the terminated employee at the time of termination, coded: 0 = good 1 = poor
Company's financial situation	FINANCE	The company's financial situation at the time of termination, coded: 0 = good 1 = poor
Company's concern for employees and staff relations	CULTURE	The company's level of concern for the employees and staff relations, coded: 0 = low 1 = high
Risk of litigation	LIGITATE	The perceived level of risk of litigation, coded: 0 = low 1 = high
Reason for termination	REASON	The reason for the employee termination, coded: 0 = restructuring in which case there is no fault on the employee's part 1 = performance-related in which case there is some fault on the employee's part but not sufficient for the employer to establish just cause.
Gender	GENDER	The employee's gender, coded: 1 = male 2 = female
Personal hardship on employee	PERSONAL	The level of personal hardship on the employee as a result of the termination, coded: 0 = low 1 = high

In choosing the design, both reality and feasibility were considered. Factorial designs in this instance are not feasible to address the research questions due to the demand on the number of respondents (or the number of scenarios each respondent must handle.) Orthogonal designs are also not employed because many variables are naturally correlated such as age, position, and length of service and a design with all factors independent may result in unrealistic situations like having a 30-year-old employee with 20 years of service. A more realistic design is to build from the real life cases as provided by the legal court reports. This also allows a more meaningful comparison between the legal and the HR perspectives.

The assignment of values to variables involved first the clustering of the legal cases by the explanatory factors relating to individual employee characteristics found to be significant in the regression analyses and then sampling from the clusters to ensure a fair representation for each group. (Cluster analysis is an approach to combine the observation units into groups of relatively homogeneous units (Jobson, 1992).) These variables include the length of service, age, salary, and position. Although salary has not been mentioned by the HR interviewees as an important decision criterion, its significance found under the legal analyses makes it a factor worthwhile to include in this part of the analysis. Using the Ward's method (Jobson, 1992:514) and standardized variables, 7 clusters were identified. The average characteristics of the clusters are presented in Table 7.2.

Table 7-2
Average Statistics of the Clusters

	Clusters						
	1	2	3	4	5	6	7
Age (years)	34.7	49.6	56.6	46.5	47.2	35.4	44.9
Salary (p.a.)*	53240	64762	50939	56540	153945	60034	30748
Service (years)	4.9	4.9	32.5	17.3	7.6	8.3	3.7
Occupational Level	3.1	3.1	2.1	2.8	4	1.4	1.4

* at the 1996 salary level

A graphic presentation will further help to enhance the observation of the differences among the clusters. Two dimensions are shown in each of Figure 7-1 and Figure 7-2.

Figure 7-1
Cluster Distribution by Service and Age

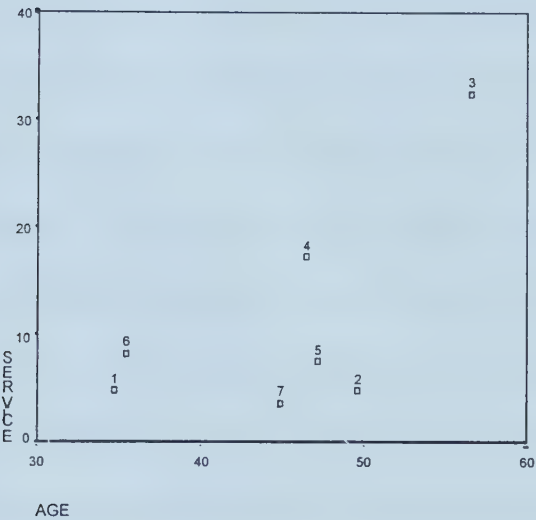
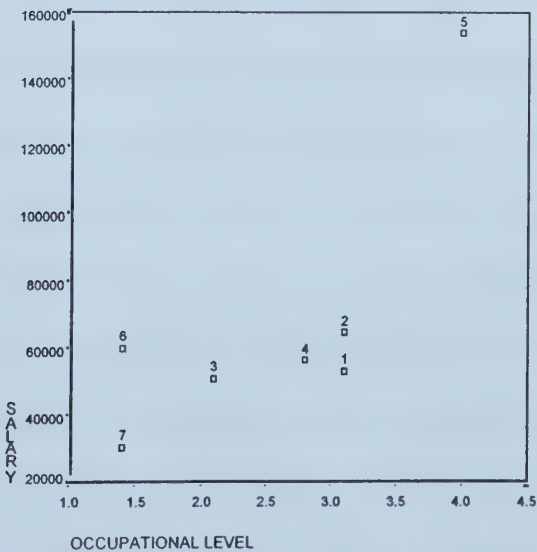


Figure 7-2
Cluster Distribution by Salary and Occupational Level



In Figure 7-1, cluster 3 stands out as the cluster with very high average age and service length. Cluster 4 involves cases of moderately long service. Clusters 2, 5, and 7 are quite close in this figure, indicating that they are differentiated probably along the other two dimensions. This is similar for clusters 1 and 6. Figure 7-2 confirmed that clusters 2, 5, and 7 are different in these dimensions. Cluster 5 is comprised of entirely the senior management level with extremely high salaries. Cluster 2 involves basically middle/junior management levels with slightly above average salaries while cluster 7 is more for the lower two levels of occupational groupings with relatively low salaries. Cluster 1 is also very different from cluster 6 in that the former involves basically the middle/junior management categories while cluster 6 is more for the lower two levels of occupational groupings. In sum, the clusters can generally be described as follows:

- Cluster 1: Mostly middle/junior management levels of under 40 years of age.
- Cluster 2: Mostly middle/junior management level of over 40 years of age
- Cluster 3: Non-senior management levels with service over 25 years and age over 50.
- Cluster 4: Mostly supervisory and middle/junior management levels with age over 40 and service usually between 10 and 25 years.
- Cluster 5: Senior management levels with high salaries.
- Cluster 6: Supervisory level and below with relatively higher income and age below 40.
- Cluster 7: Supervisory level and below with relatively short service and lower income.

Although including more scenarios would enhance the reliability and validity of the findings and would better delineate the effects of one factor from another, the scenario number had to be kept low as the response time required was a major concern to HR practitioners. Since previous research (e.g., Hitt and Middlemist, 1979; Tyler and Steenma, 1995) indicated that 30 scenarios would at least allow for some analyses at the individual level and too many scenarios may give rise to fatigue and result in a lower response rate, the number of scenarios was set at 30. (This number was later confirmed in the pre-test to be appropriate in terms of the time

required for the completion.) To achieve a balanced design with roughly equal representations from each cluster grouping, 4 to 5 cases were randomly selected from each cluster.

For the other variables in Table 7-1 (FINANCE, GENDER, CULTURE, REASON, LITIGATION, PERSONAL, and MARKET), care was exercised to ascertain that values were randomly assigned so as to keep the correlation low to make individual factor effects as stable and identifiable as possible. Table 7-3 shows the correlation of the scenario variables for the 30 scenarios. It is noted that none of these 7 variables has significant correlations with each other. Random assignments of values to the factors in policy-capturing research has been employed by various researchers before (e.g., Hitt and Middlemist, 1979; Hitt and Tyler, 1991; Keats, 1991).

Table 7-3
Correlations of Scenario Variables

Correlations

Statistics	AGE	CULTURE	FINANCE	GENDER	LITIGATE	LNSAL_98	LNSERV	MARKET	OCC	PERSONAL	REASON
Pearson											
Correlation											
AGE	1.000										
CULTURE	-.129	1.000	.048	.107	-.151	.083	.379*	.102	-.025	-.050	.071
FINANCE	.048	.067	1.000	.000	-.200	-.191	-.132	.208	.031	.136	-.067
GENDER	.107	.067	1.000	-.134	.067	.087	-.057	-.208	.031	.000	.067
LITIGATE	-.151	.000	-.134	1.000	1.000	-.112	.215	-.157	-.184	-.218	.144
LNSAL_98	.083	-.200	.067	-.134	1.000	.149	-.135	-.069	-.092	.000	.067
LNSERV	.379*	-.191	.087	-.112	.149	1.000	.018	-.116	.761**	-.199	.007
MARKET	.102	-.132	-.057	.215	-.135	.018	1.000	-.171	-.125	.223	-.148
OCC	-.025	.208	-.208	-.157	-.069	-.116	-.171	1.000	.032	-.056	-.033
PERSONAL	-.050	.031	.031	-.184	-.092	.761**	-.125	.032	1.000	-.125	.031
REASON	.071	.136	.000	-.218	.000	-.199	.223	-.056	-.125	1.000	.027
Sig. (2-tailed)											
AGE		.498	.802	.575	.426	.664	.039	.592	.894	.795	.709
CULTURE	.498		.726	1.000	.289	.312	.485	.271	.872	.473	.724
FINANCE	.802	.726		.481	.726	.649	.763	.271	.872	1.000	.724
GENDER	.575	1.000	.481		.481	.556	.253	.407	.330	.247	.448
LITIGATE	.426	.289	.726	.481		.432	.477	.716	.629	1.000	.724
LNSAL_98	.664	.312	.649	.556	.432		.926	.541	.000	.292	.972
LNSERV	.039	.485	.763	.253	.477	.926		.367	.511	.236	.436
MARKET	.592	.271	.271	.407	.716	.541	.367		.868	.767	.864
OCC	.894	.872	.872	.330	.629	.000	.511	.868		.510	.871
PERSONAL	.795	.473	1.000	.247	1.000	.292	.236	.767	.510		.885
REASON	.709	.724	.724	.448	.724	.972	.436	.864	.871	.885	

*. Correlation is significant at the 0.05 level (2-tailed).

**. Correlation is significant at the 0.01 level (2-tailed).

To recapitulate, there are 30 scenarios in each survey. Each scenario involves 11 variables as discussed in Table 7-1 and requires a notice period decision from each respondent. Therefore, each respondent is expected to make a total of 30 notice period decisions. A version of the complete survey is in Appendix V. An example of a scenario is as follows:

Company's concern for employees and staff relations	Low
Degree of hardship on employee	Low
Occupational level	Middle/Junior Management
Years of service	5
Reason for termination	Performance-related
Salary (per annum)	\$63,000
Perceived risk of litigation	High
Labour market condition	Good
Company financial situation	Poor
Gender	Male
Age	52
The appropriate notice period is _____ months.	

In the design stage, a preliminary version of the survey similar to that described above was pre-tested to ensure that the instructions were clear and the scenarios put forward were realistic. Twenty members of the Human Resource Management Association of the University of Alberta participated. One human resource instructor and five Ph.D. students in the Organizational Analysis Department of the University of Alberta also took part in the pre-test. Overall, to the question of "Are the scenarios clear and easy to understand?", the mean rating given by the participants was 4.3 out of a scale of 5 (with 5 being the highest rating towards "yes"). Spaces were provided for comments on unrealistic scenarios or other areas for improvement. The average time for completing the decision part of the survey was 23.5 minutes.

Useful information was obtained and parts of the survey were modified accordingly. The time taken for completion confirmed that the number of scenarios was manageable, and since it did not include the time that would be required for qualitative comments and answering of individual characteristics questions in the real survey, it was considered not advisable to add further scenarios to the survey.

In the actual survey mail-out, the cases were randomly arranged and put in different orders in four survey versions to avoid bias due to the ordering. This is similar to and better than the design used by Viswesvaran and Barrick (1992) in which two versions were used, with the second one reversing the arrangement of the first. In the current survey, Version A was composed of scenarios in a random order. In Version B, pairs of scenarios were flipped, i.e., scenarios 1 and 2 in Version A became scenarios 2 and 1 respectively, scenarios 3 and 4 in Version A became scenarios 4 and 3 respectively, and so on. Version C was composed of the scenarios in the reversed order of Version A while Version D was composed of the scenarios in the reversed order of Version B. Variables were also arranged in different orders for each scenario to avoid potential bias due to the within-scenario ordering.

Respondents were also asked to rate the 11 scenario factors according to their subjective judgment by allocating 100 points across the factors considered important. Demographic information of the respondents, as well as their level of involvement and main objectives in severance compensation, was also captured. Such information relates to the individual respondents and the 12 variables capturing it are the individual characteristics variables. While these variables should be independent of the 11 scenario variables (the values of which were assigned by the researcher), they may bear some relationships with the notice period decisions as it is believed that the decision-maker's characteristics will influence that individual's decisions. These individual characteristics variables are summarized in Table 7-4 below. Finally, spaces were left for comments in various parts of the survey.

Table 7-4
Individual Characteristics Variables

Variable	Description
RES_GEND	Gender of the respondent coded: 1 = male; 2 = female
RES_AGE	Age of the respondent.
RES_CHRP	Dichotomous coding for whether respondent was a Certified Human Resources Professional (CHRP) - 1 = yes and 2 = no.
RES_HRYR	Years of service in human resources for the respondent.
RES_POST	The occupational level of the respondent in his/her organization (for consultants, retirees, and respondents not currently employed, the level of position that best reflects his/her capabilities), coded: 1 = Senior management 2 = Middle/junior management 3 = Non-management
RES_IND1	Dummy variable for respondent industry type being manufacturing.
RES_IND5	Dummy variable for respondent industry type being government/quasi-government.
OIL_CON	Dummy variable for respondent industry in either construction or oil/gas. The two industries are combined because they both are subject to seasonal/cyclical fluctuations and a number of respondents reported their organizations were involved in both industries.
INVOLVE	The general level of the respondent's involvement in his/her organization's severance compensation decision, coded: 1 = he/she being the decision-maker in a number of situations 2 = he/she playing a major role in making the decision by giving recommendations or advice. 3 = he/she being involved in the decision-making process and have had some minor degree of influence. 4 = he/she not being involved in the decision-making but was aware of the criteria for wrongful dismissal decisions.
LRESSIZE	Size of the respondent's organization with a natural log transformation to achieve a more normal shaped distribution required for regression analyses. (For consultants, the size of the organization does not serve as an appropriate control variable. Rather, the average size of the client organizations of the consultants would be more appropriate to use as the decisions relate to those organizations. In such cases, the value was regarded as missing.)
LRESSIZM	LRESSIZE with missing values replaced by the mean. As most of the missing cases relate to consultants who were dealing with various sizes of organization, without knowing their specific clientele, the mean should be an appropriate substitute.
D_RANKLI	Dummy variable for respondents ranking avoiding litigation (amongst avoiding litigation, helping employees as much as possible, and being fiscally accountable to the organization) as being their top severance compensation objective.
D_RANKEE	Dummy variable for respondents ranking helping employees as much as possible (amongst avoiding litigation, helping employees as much as possible, and being fiscally accountable to the organization) being their top severance compensation objective.

The Sample

The recipients of the formal survey were the members of two human resources professional associations in Alberta, The Human Resources Management Association of Edmonton (HRMAE) and the Human Resource Institute of Alberta (HRIA). Initial contact to seek support from the associations occurred early in the survey conceptualization process. When the survey was designed, a draft copy was forwarded to the associations to confirm their assistance. After a formal approval process that took months, mailing lists were then obtained which allowed for the survey distribution in early February 1999.

At the time of distribution, HRIA and HRMAE had 778 and 362 members respectively. In matching the lists, 109 members were found to be members of both organizations and as such, they were only sent one copy of the survey. Although the associations are in Alberta, there were some members who were at that time working out of the province. Ten members who were residing out of Canada were excluded from the survey as their notice period decisions might have been affected by the context of their new country environment. Therefore, the total number of surveys mailed out to the two associations' members was 1,021. Four more surveys were distributed to HR practitioners the researcher knew who were not on the two associations' mailing lists. Four more were sent to an HR practitioner whom the researcher interviewed months before. This practitioner had said that perhaps he could ask some of his colleagues, who were not members of the professional associations, to help in the survey completion, but it was not known if the surveys had actually been forwarded. During the February and March, 1999 HRMAE monthly dinner functions, 14 and 22 more surveys were given out respectively. Some of these were handed out as replacement copies for people who had lost their copy. Some were given out to members with the request that they pass along to their colleagues or friends in human resources. Possibly, some guest members took the copies just to have a look at it. It was not certain how many of these surveys subsequently given out actually did reach the hands of

target HR practitioners. The total number of surveys distributed to HR practitioners was therefore somewhere between 1,025 and 1,065.

Three of the surveys were undeliverable. One mailed survey had to be discounted as the recipient was the researcher herself. A total of 149 completed surveys were returned, establishing a response rate of 14 to 15%. Another 4 blanked surveys were returned, with the senders informing that they were not involved in the area. Two more sent e-mails and another one advised over the phone of the same situation. A few more recipients attending the HRMAE functions also informally notified the researcher that they were not able to complete the survey due to their lack of involvement in the area. Given that the recipient group comprised of HR practitioners in various specializations, it is quite possible that a large number of them were in functions other than severance compensation, e.g., recruitment, training, benefits administration, labour relations, health and safety, etc. As the survey requested participation by only recipients with knowledge on severance compensation criteria, had it been possible to determine the actual number of recipients qualified to participate in the survey and adjust the response rate accordingly, the response rate would have been much higher. In any case, reasonable efforts were made to enhance the response rate as much as possible. Around the time of the survey distribution, an HRMAE newsletter with an article on the survey went out, drawing members attention to the survey. Announcements were also made at the HRMAE dinner functions to encourage the return of the survey. (HRIA did not have regular functions for similar announcements.) Furthermore, a formal reminder was sent to HRMAE members three to four weeks after the survey was distributed. A similar reminder was given to the editor of the HRIA newsletter the week following the survey distribution for publication at the end of February. Unfortunately, the newsletter distribution was delayed until mid-April by which time the reminder had lost its effectiveness.

Regarding the respondents' profile, 64% were Certified Human Resources Professionals

(CHRP), which is very comparable to the recipients group's CRRP composition of 67%. About 55% of the respondents were males as compared with around 41% in the recipient population, indicating a much higher representation of males in the respondent group. This is understandable as an analysis of the respondent group indicates males were associated with a higher level of involvement in severance compensation decisions. The average age of the respondents was 43 with HR experience of 15 years. 45% of the respondents were in senior management, 42% in middle/junior management and a very small percentage in non-management positions. These characteristics indicate that the respondents are generally quite experienced in the HR area. There was a wide range to the size of the recipients' organization, with about half the recipients working in organizations with 100 to 999 employees. As for the industry type, 49% of the respondents were in the service sector followed by 24% in government and quasi-government settings. Over two-thirds of the respondents were decision-makers or played a major role in the decision-making of severance compensation.

Ethical Considerations

In the covering letter accompanying the survey, the purpose of the research, how the survey would be handled and how the information would be used were explained. Recipients were assured that participation was totally voluntary and anonymous. It is important for research ethic purposes that the recipients can make an informed decision as to whether or not to voluntarily participate. The use of hypothetical situations not only minimizes the risk of leaking actual sensitive employee information, but also reduces the potential for claims based on precedence. In any case, care has been taken to ensure confidentiality of the information, especially the respondents' personal information, and anonymity of the informants. This was done by requesting the survey to be sent directly to the researcher, by limiting access of the survey to the researcher and her supervisory committee, and by presenting the data generally on an aggregate basis. Respondents interested in having a copy of the findings were requested to

contact the researcher separately after their return of the survey so that anonymity would not be compromised. As promised to the practitioners throughout the survey preparation and distribution, a copy of the summary findings, once available, was sent to the HR associations, practitioners interviewed, and practitioners who made a request for the report. Around 50 copies of the report were distributed. Throughout the process, the University of Alberta's Ethics Guidelines were strictly followed.

Chapter 8

Analyses, Findings and Discussion

Data and Findings

Of the 149 responses received, 1 arrived over 5 months after the survey distribution, which was too late for inclusion in the final run of analyses. Another one was not included in the data entry because 28 of the 30 scenario responses were the same with the other two deviating very little and thus, did not give sufficient variance for the establishment of any meaningful decision models. Thus, 147 responses were used for the analyses. The data available from the survey can be presented in the form of the following matrices:

Y	X	Z
<div style="border-left: 1px solid black; border-right: 1px solid black; border-bottom: 1px solid black; padding: 10px;"> <p>Matrix of Individual Responses to Notice Decisions:</p> <p style="text-align: center; margin-top: 20px;">147 x 30</p> <p style="text-align: center;">individuals scenarios decisions</p> </div>	<div style="border-left: 1px solid black; border-right: 1px solid black; border-bottom: 1px solid black; padding: 10px;"> <p>Scenario Variables Matrix (values for 11 variables are different for each scenario):</p> <p style="text-align: center; margin-top: 20px;">30 x 11</p> <p style="text-align: center;">scenarios variables in each scenario</p> </div>	<div style="border-left: 1px solid black; border-right: 1px solid black; border-bottom: 1px solid black; padding: 10px;"> <p>Individual Decision-Makers' Characteristics Matrix:</p> <p style="text-align: center; margin-top: 20px;">147 x 12</p> <p style="text-align: center;">indiv- demographic/ iduals organization variables</p> </div>

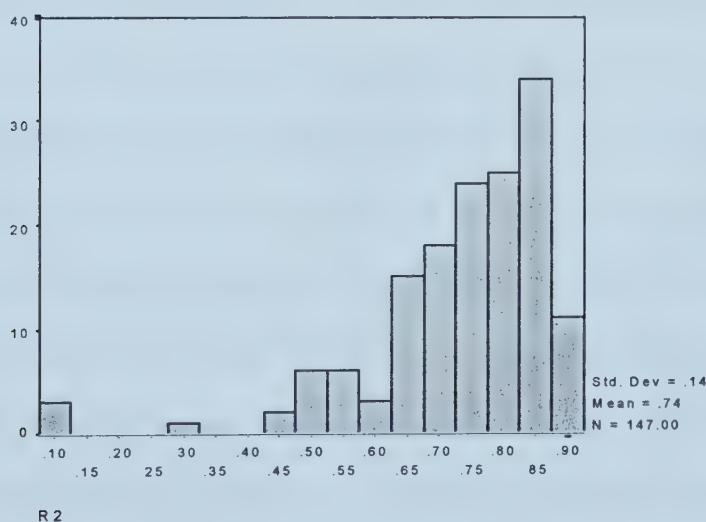
Y contains 147 x 30 data points involving all the notice decisions of all respondents. X contains the values of the 11 scenario variables for the 30 scenarios, which were assigned by the researcher. Z contains individual information (captured by 12 variables) of the 147 respondents. With these data matrices, a variety of statistical analyses were conducted. In this chapter, the first step of the analyses involves identification of the outliers and respondents with inconsistent decision models. This is followed by descriptive statistics of the overall notice periods and the respondents' subjective ratings of the importance of the scenario variables. Five sets of analyses are then presented. They involve regression analyses at both the individual level and the

aggregate level, using NOTICE as the dependent variable and the scenario variables as the independent variables. Some analyses also include the individual decision-makers' characteristics variables as the independent variables. Details of each set of analyses are given in the respective sections. The latter part of the chapter includes a discussion of the findings followed by the chapter summary.

Outlier Identification

Using the responses for the 30 scenarios, a separate regression model was run for each respondent with notice period as the dependent variable and the 11 scenario variables as explanatory variables. (See the section on Individual Level Analyses for details.) The R^2 s for the 147 models range from 0.1 to 0.9 with an average of 0.74, showing that the models have generally very good explanatory power. The distribution of R^2 is shown in Figure 8-1 below.

Figure 8-1
 R^2 Distribution of Individual Decision Models
(by number of cases)



Four cases have very low R^2 values (less than 0.4) that obviously fall outside of the range of the other cases. Consistent with the criteria established in prior research work (e.g., Hitt, Ireland, and Keats, 1983; Hitt and Middlemist, 1979; and Tyler and Steenma, 1995), models with R^2 less

than 0.4 were regarded as lacking consistent decision criteria. These four cases were therefore regarded as outliers and removed from the subsequent aggregate analyses.

Next, the average notice period across the 30 scenarios for each respondent was calculated. Such individual averages ranged widely from 1 month to over 14 months, with an average of 7.1 months, indicating a great degree of variation in terms of leniency or tightness in awarding the notice. Seven cases were found to have an average notice period over 2 standard deviations from the overall average notice period. Further analyses were done to determine which cases should be regarded as outliers.

Effect coding dummies were added, one for each respondent, to measure variation in individual level of response after controlling for the 11 scenario variables. A regression involving all the scenarios and all respondents (except the 4 with inconsistent models) was carried out. The resulting effect coding coefficients should represent the individual deviations from the mean. It is expected that these deviations should partly be explainable by the individual characteristic variables related to the decision-makers. Cases of large deviations that could not be explained by such variables could then be regarded as outliers. The effect coding coefficients were, therefore, regressed on the individual characteristic variables (see Table 7-4). A stepwise regression was used and the significant individual variables included the respondents' HR experience (RES_HRYR) and the respondents' industry type being manufacturing (RES_IND1). Size of the respondents' organization (LRESSIZE), although not significant at the conventional level of 0.05, was next in the level of significance with $p=0.08$ (one-tailed). Some preliminary analyses using other statistical methods have indicated the potential significance of this size variable and thus LRESSIZE was also included in the model. The standardized residuals of this model were analyzed. Of the 7 respondents identified as having average notice periods more than 2 standard deviations from the overall average notice period, only 4 had standardized residuals exceeding the absolute value of 2 in this analysis. Although one could expect that for

some 140 cases, using a 5% significance level, about 7 cases would fall into the extreme regions just by chance. Therefore, the number of extreme cases for this data set seems quite normal. On further examination, it was noted that among those extreme cases identified in the above methods, only one case was in the higher end whereas all the others were in the lower extreme. Leaving all these cases in the subsequent analyses may have the potential of lowering the overall notice period. As the purpose of the research is to understand the normal decision criteria and to help in future prediction of the notice period, it is advisable to eliminate the extreme cases. The four cases identified to involve extreme “high-ball” or “low-ball” decisions that could not be explained by the scenario or individual characteristic variables were thus regarded as outliers and excluded from further analyses.

In total, 8 outliers were excluded, 4 related to inconsistent decision models and another 4 due to extreme decisions. The subsequent aggregate analyses, therefore, include only 139 respondents’ decisions.

Descriptive Statistics

Table 8-1 shows the composition of the 30 scenarios and their respective average notice period awarded by the respondents. It is obvious that the average notice periods differ quite significantly across the 30 scenarios, ranging from an average of 0.69 months to 18.54 months. A repeated measures Generalized Linear Model, with the 30 notice period variables as the dependent variables (i.e., one for each scenario) was run. The test statistics of 46.812 has a significant p-value of 0.000 when compared with an F distribution of 29 and 98 degrees of freedom (after listwise deletion of 12 cases with missing values for some notice period variables). The null hypothesis of equal notice period across scenarios can, therefore, be rejected. It confirms that decision-makers did grant different notice periods across the scenarios and there are reasons to continue the analyses to see which factors were the significant determinants of the notice periods.

Table 8-1: Composition of Scenarios and the Average Notice Periods

Case	Age	Occupational Level	Gender	Labour Market Condition	Company's Financial Situation	Company's Concern for Employees	Risk of Litigation	Personal Hardship of Employee	Reason for Termination	Length of Service (years)	Salary (per annum)	Average Notice (N=139) (months)
1	44	non-supervisory, e.g., clerical, sales	M	good	poor	high	high	high	performance	2.5	30500	2.24
2	63	non-supervisory, e.g., clerical, sales	F	poor	poor	high	low	low	performance	43	31000	16.93
3	48	supervisory	F	good	poor	high	low	low	restructuring	6.5	46000	5.44
4	56	senior management	M	poor	poor	low	high	low	performance	1.5	288000	4.91
5	43	senior management	F	good	good	high	low	high	restructuring	19	124500	14.74
6	43	supervisory	M	poor	good	low	high	low	restructuring	17	48500	11.63
7	30	non-supervisory, e.g., clerical, sales	F	poor	good	low	low	low	performance	0.5	19000	0.69
8	49	supervisory	F	good	poor	low	high	low	performance	20	45000	11.20
9	52	non-supervisory, e.g., clerical, sales	M	good	poor	high	low	high	performance	4.5	21000	3.16
10	57	middle/junior management	F	good	good	low	high	low	performance	3.5	87500	3.97
11	39	senior management	F	good	poor	low	low	low	performance	7.5	152000	6.50
12	42	senior management	M	poor	good	high	low	low	performance	2	53500	2.64
13	35	middle/junior management	M	good	poor	low	high	low	restructuring	7	91500	5.93
14	51	supervisory	F	poor	good	low	high	high	performance	26	54000	13.91
15	49	senior management	M	poor	good	high	high	low	restructuring	3.5	101000	5.29
16	47	middle/junior management	M	poor	good	high	low	low	restructuring	2	41000	2.56
17	49	non-supervisory, e.g., clerical, sales	F	poor	poor	high	high	high	restructuring	5	25500	4.14
18	38	supervisory	F	good	good	high	high	low	performance	8	56000	5.52
19	26	non-supervisory, e.g., clerical, sales	F	good	good	high	high	low	restructuring	3.5	43000	2.80
20	47	senior management	F	good	poor	high	low	low	performance	3.5	116500	4.44
21	37	non-supervisory, e.g., clerical, sales	M	good	good	low	high	high	performance	9.5	58500	5.58
22	56	supervisory	F	good	good	low	low	low	restructuring	31	36000	15.85
23	31	senior management	M	good	poor	high	high	high	performance	8	70500	6.35
24	38	middle/junior management	M	poor	good	high	low	high	performance	6	43500	4.38
25	63	supervisory	M	good	good	low	low	high	restructuring	32	74000	18.54
26	37	middle/junior management	M	good	poor	low	high	high	restructuring	2	48000	2.43
27	40	middle/junior management	M	poor	poor	high	low	high	restructuring	16	62000	10.86
28	48	middle/junior management	F	good	good	low	low	high	performance	18	43000	10.25
29	52	middle/junior management	M	good	poor	low	high	low	performance	5	63000	4.26
30	39	supervisory	M	good	poor	low	low	low	restructuring	9	58000	6.04

Table 8-2 shows the breakdown of the respondents' subjective ratings across different factors considered important. According to the mean ratings given, "length of service" appears to be the most important factor, getting an average rating of over 25 out of 100 points. This is followed by "reason for termination", "age", "occupational level" and "labour market condition" respectively. "Company's concern for employees", "personal hardship on employee", "risk of litigation", and "salary" account for some 3 to 6 points out of 100 while "gender" was given the lowest subjective average rating of less than 1 in 100 in terms of importance in the decision-making. Note that, so far, the discussion of the relative significance of the factors here is independent of any analyses on the scenario decisions.

Table 8-2
Subjective Ratings of Respondents

% ALLOTTED	NUMBER OF RESPONDENTS										
	Age	Company's Concern for Employee	Company's Finance Situation	Gender	Personal Hardship on Employee	Risk of Litigation	Labour Market Condition	Occupational Level	Reason for Termination	Salary	Length of Service
0	13	72	90	125	85	63	46	26	30	78	4
5 or below	13	29	28	13	23	30	25	16	10	23	2
6-10	26	26	19	7	23	35	42	41	30	28	18
11-20	71	16	7	0	12	12	31	40	43	13	57
21-30	19	1	1	0	2	4	0	18	19	3	35
31-40	1	1	0	0	0	1	1	3	4	0	16
41-50	2	0	0	0	0	0	0	1	6	0	8
51-60	0	0	0	0	0	0	0	0	3	0	1
61-70	0	0	0	0	0	0	0	0	0	0	1
71-80	0	0	0	0	0	0	0	0	0	0	1
81-90	0	0	0	0	0	0	0	0	0	0	0
91-100	0	0	0	0	0	0	0	0	0	0	2
Total	145	145	145	145	145	145	145	145	145	145	145
Mean	15.47	4.98	3.11	0.81	3.98	5.69	7.54	12.43	15.60	4.64	25.09

Regression Analyses

Five sets of regression analyses were conducted. Set 1 involves individual level analyses in which 147 regressions were run, with the notice decisions for each individual regressed on the 11 scenario variables. Set 2 involves aggregate level analyses in which all the notice decisions of the 139 respondents (excluding outliers), totally 139 x 30 in number, were regressed on the scenario variables only. Set 3 involves aggregate level analyses in which all the notice decisions were regressed on the scenarios variables and the 12 individual characteristics variables. Set 4 involves aggregate level analyses that focused on one individual characteristics variable - HR experience, with the notice decisions regressed on the scenario variables and the HR experience variable. (For the above 4 sets of analyses, the ordinary least square (OLS) regression method was used.) Finally, Set 5 further analyzes the effects of the individual characteristics variables using the multivariate regression method.

SET 1: Individual Regression Analyses

In this set of analyses, 147 regressions were run, one for each respondent. The dependent variable and independent variables matrices for each regression are Y_i and X respectively as shown below:

$$\begin{array}{c} \mathbf{Y_i} \\ \left[\begin{array}{c} \text{A Vector} \\ \text{of Notice} \\ \text{Decisions} \\ \text{for} \\ \text{Respondent } i \\ \\ 30 \times 1 \end{array} \right] \end{array} \quad \text{and} \quad \begin{array}{c} \mathbf{X} \\ \left[\begin{array}{c} \text{Scenario Variables Matrix} \\ \text{(values for 11 variables are} \\ \text{different for each scenario):} \\ \\ 30 \quad \times \quad 11 \\ \text{scenarios} \quad \text{variables in} \\ \quad \quad \text{each scenario} \end{array} \right] \end{array}$$

In view of the large ratio of scenario variables to the number of scenarios, stepwise regression was used for the individual level analyses. The R^2 s of the 147 models ranged from 0.1 to over 0.9. The average R^2 is 0.74, indicating fairly consistent decision-making for each individual

across the 30 scenarios. A summary of the analysis of the more significant variables is shown in Table 8-3 below:

Table 8-3
Descriptive Statistics of Significant Factors in Individual Regressions

Factor	Frequency of significance ¹	% of notice variance explained ²	Average Unstandardized Regression Coefficients ³	
			A	B
Length of service	140	55	3.93	3.85
Age	71	7	0.17	0.09
Occupational Level	31	11	1.33	0.29
Labour Market	27	3.5	2.45	0.46
Company Financial Situation	26	3.2	-1.88	-0.34
Reason for Termination	23	18	-3.20	-0.51
Gender	6	Too few occurrences for inference.		

Note:

1. A total of 143 models were analyzed, excluding 4 respondents with inconsistent decision models ($R^2 < 0.4$).
2. This explanatory power of factors was calculated by finding the difference in R^2 between the full stepwise regression model and the model with each significant variable excluded one at a time. The numbers are the average percentages among only the models in which the factor was found to be significant.
3. Column A shows the average values of the coefficients among only the models in which the factor was found to be significant. Column B shows the average values of the coefficients among all the 143 models, assuming the coefficients are zero for models in which the factor was found to be non-significant.

Among the 143 individual models, LNSERV (length of service) showed up as the most prominently significant variable, both in terms of frequency and explanatory power. All other factors listed above seemed to be significant to various extents except for gender, which was significant in only 6 models. Factors not shown in the table include personal hardship to the employee (PERSONAL), which is significant in only 2 models, as well as company's concern for employees (CULTURE), and risk of litigation (LITIGATE), each significant in the predicted direction in only 1 model. When the salary variable, LNSAL_98, was included in the regression analysis, the direction of the effect of occupational level (OCC) was often opposite of that predicted. In fact, the correlations analysis in this HR data set also shows that NOTICE and

OCC are negatively correlated at -0.039. Since OCC and LNSERV happened to be negatively correlated in this sample, higher occupational levels were associated with a shorter length of service and thus, a shorter notice period. This can be especially true when salary is controlled for. That is, when salary is held constant, higher occupational level is likely to be more associated with a shorter length of service. Partial correlation analysis of NOTICE with OCC controlling for LNSAL_98 confirms an even greater negative value (-0.1525 as compared with -0.039). There could be another possible explanation for the negative OCC coefficient. For example, when salary and length of service are controlled for, it is possible that a lower level employee should receive a longer notice because it is harder for that employee to find comparable employment as compared with a higher level employee. That is, a clerk earning \$50,000 per annum will have a more difficult time to find a comparable job than a middle management person earning the same amount. In any case, it is noted that when LNSAL_98 was not included in the partial correlations or multiple regression analyses, OCC became significant. For example, a partial correlations analysis of NOTICE with OCC controlling only for LNSERV gave a positive value of 0.0698. This is probably due to the fact that both OCC and LNSAL_98 are indicators of the employment status in the organization and are highly correlated (Pearson correlation = 0.76). (Such a correlation is even higher than in the legal analysis part for which major collinearity problem for these variables was not found to exist.) It is recognized that high collinearity may cause instability in the estimates. The best method to handle a collinearity problem is to expand the data set, which unfortunately in this case, is not feasible given the time and respondent constraints. Another way is to use only one of the two variables involved. As most respondents' subjective ratings indicate that the occupational level was more their concern than the salary level, the salary variable was excluded in this set of individual level analyses, so as not to mask the effect of occupational level and to avoid the possible collinearity problem. The variable, LNSAL_98, therefore was not included in Table 8-3.

As for the regression coefficients, column A shows the average among only the models in which the factor was found to be significant. According to this column, for every unit increase in the Ln of length of service in years, the predicted notice period increases by 3.9 months. For example, if length of service increases from 5 years to 15 years, the estimated notice period will increase by about 4.3 months. The coefficient of 0.171 for age means that a difference in age of 30 years will result in a difference of over 5 months in the predicted notice decisions. Terminated employees at the highest occupational level are estimated to have an average notice period 4 months longer than those at the most junior level. Respondents who considered labour market condition important gave an average of 2.45 months more for a poor condition than for a good condition. On the other hand, respondents who considered company financial situation important gave an average of 1.88 months less when the company financial situation was poor. Among respondents whose model gave a significant coefficient for reason for termination, the difference between an employee terminated for performance-related reasons and one terminated for restructuring amounts to 3.2 months.

As almost all respondents' model gave a significant coefficient for length of service, the coefficient values for column A and column B are very close. That is, the coefficients averaged over 140 models and over 143 models (assuming the coefficient is 0 for the remaining 3 models) are similar. This is not the case with the other factors. The lower the frequency of significance for the factor, the greater is the deviation (in percentage terms) between the two columns.

Section summary

The individual regression analyses show that length of service is the most predominant factor, both in terms of explanatory power and frequency. Age, occupational level and reason for termination are also important to various extents according to these same two criteria. Although the frequencies of significance of labour market condition and company financial situation are similar to those of occupational level and reason for termination, their explanatory

powers are relatively less. Since the regression results vary greatly across individuals, and there are substantial deviations between column A and column B of the average regression coefficients, depending on the assumptions used, it is necessary to conduct further analyses on an aggregate basis in order to obtain more generalizable results.

SET 2: Aggregate Level Analyses

In this set of analyses, all the respondents’ notice decisions were combined to form the dependent variable vector, Y_A . The independent variables matrix is X_A , which is obtained by replicating the matrix X 139 times, as there are 139 usable responses for this set of analyses.

These matrices are illustrated below:

Y_A		X_A
<div> <div>Respondent 1’s 30 scenario decisions 30 (scenarios) x 1</div> <div>-----</div> <div>Respondent 2’s 30 scenario decisions 30 (scenarios) x 1</div> <div>-----</div> <div> <div>[The pattern</div> <div>continues until</div> <div>Respondent 139</div> <div>has been included,</div> <div>giving a matrix of</div> <div>(139 x 30) x 1.]</div> </div> </div>	and	<div> <div>Scenario Variables Matrix X</div> <div>30 x 11</div> <div>scenarios scenario variables</div> <div>-----</div> <div>Scenario Variables Matrix X</div> <div>30 x 11</div> <div>scenarios scenario variables --</div> <div>-----</div> <div> <div>[The X matrix is repeated</div> <div>139 times, giving a matrix</div> <div>of (147 x 30) x 11.]</div> </div> </div>

The first analysis involved regressing the notice decisions for all the observations ($N = 4109 = 30 \times 139$ less cases of missing NOTICE values) on all the 11 scenario variables. The results are as shown in Table 8-4.

Table 8-4
Regression on Scenario Variables Only

Coefficients^a

Model		Unstandardized Coefficients		Standard ized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-15.827	1.956		-8.090	.000
	AGE	8.31E-02	.008	.124	10.414	.000
	CULTURE	-1.183	.140	-.098	-8.449	.000
	FINANCE	-.702	.133	-.058	-5.270	.000
	GENDER	.823	.146	.068	5.651	.000
	LITIGATE	-1.112	.142	-.092	-7.859	.000
	LNSAL_98	1.167	.198	.110	5.882	.000
	LNSERV	3.622	.076	.613	47.533	.000
	MARKET	1.459	.146	.116	9.971	.000
	OCC	-.167	.102	-.030	-1.641	.101
	PERSONAL	.626	.146	.051	4.276	.000
	REASON	-.931	.134	-.076	-6.938	.000

a. Dependent Variable: NOTICE

The R^2 for the regression is 0.566 indicating that the scenario variables are able to explain over 56% of the notice period variance. All the variables except OCC seem to be significant at the $p < 0.001$ level. However, further examination of the results is warranted. First, CULTURE, which is the company's concern for employees and staff relations, has a negative sign, indicating that all else equal, the more the company's concern for employees, the lower the notice award. This is contrary to the hypothesis. The negative coefficient could be due to a chance error or more likely due to the repeated measures design with a limited number of scenarios. A post-hoc analysis on the correlations matrix of the 11 scenario variables indicates that although the bivariate correlations among the scenario variables, other than those naturally correlated individual employee characteristics, have been kept low and ascertained to be non-significant, CULTURE, the values of which were randomly assigned, happened to correlate in the negative direction with LNSERV, AGE, and LNSAL_98, all being very significant variables in the positive direction with the notice period. It is possible that a lack of an all-combinations

design may not have been able to capture the unique effect of some of the more marginal variables, especially when their correlations with some other significant variables (or the combination of them) are high. A cluster analysis on AGE, LNSAL_98, and LNSERV was conducted to test this proposed explanation. To keep things simple, a two-cluster solution (involving a high and low group) was used. This dichotomous cluster solution was then correlated with CULTURE. A moderately significant negative correlation (p-value 0.07; two-tailed) confirms that CULTURE might have captured some of the combined effects of the three other significant variables. In other words, while regression analyses are supposed to be able to delineate individual factor effects, unique effects are sometimes difficult to identify when correlations exist and the number of cases are limited.

A similar situation may have occurred for the risk of litigation (LITIGATE). The sign of the coefficient for LITIGATE has remained negative throughout the bivariate correlation analysis, partial correlations analyses controlling for various other factors, or ordinary least squares (OLS) regressions controlling for all other explanatory variables. The negative sign of the coefficient contradicts the theory prediction. It is noted that the variable happened to be negatively correlated with some significant NOTICE determinants, namely, LNSERV, AGE, and OCC. (OCC is a very positively significant variable when the regression of notice period on the scenario variables excluded LNSAL_98.) However, a two-cluster solution on LNSERV, AGE, and OCC, does not show any significant correlation with LITIGATE, but since a two cluster solution was a crude testing method, it is still possible that the effect of LITIGATE could not have been delineated from the combined effect of the other factors. As the purpose of the statistical analysis is to confirm or disconfirm hypotheses, not to capitalize on data, the negative significant coefficients for CULTURE and LITIGATE should only be regarded as disconfirming the directional hypotheses, but not confirming that the other direction is true.

Another concern is that OCC has a negative coefficient. As explained under the individual regression analyses section, occupational level (OCC) and salary (LNSAL_98) are very highly correlated (Pearson correlation = 0.761). The collinearity might have made the coefficients unstable and since both variables are indicators of the same underlying construct, employment status, it is probable that the inclusion of one of such variables may be sufficient. Subsequent analyses, therefore, have included the two variables separately. The regression of the model with CULTURE, LITIGATE, and LNSAL_98 taken out is given in Table 8-5. The R² for the regression is 0.550.

Table 8-5
Regression Results with 8 Scenario Variables Only

Coefficients ^a						
Model		Unstandardized Coefficients		Standard ized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-6.157	.439		-14.033	.000
	AGE	.103	.008	.153	12.917	.000
	FINANCE	-.868	.133	-.072	-6.509	.000
	GENDER	.729	.145	.060	5.023	.000
	LNSERV	3.802	.076	.643	50.105	.000
	MARKET	1.039	.142	.083	7.298	.000
	PERSONAL	.217	.143	.018	1.512	.131
	REASON	-.899	.135	-.073	-6.656	.000
	OCC	.332	.060	.060	5.488	.000

a. Dependent Variable: NOTICE

The results with LNSAL_98 included instead of OCC gave very similar results except the p-value of PERSONAL was 0.010. The lack of consistency in this factor's significance across the two models and the likely inflation of the t-statistics of this type of repeated measures design (see next section on the limitation) made it difficult to conclude the factor as significant. As the respondents had indicated in their subjective ratings, occupational level was used much more frequently than salary, the choice in the use between LNSAL_98 and OCC should favour

OCC. Without the non-significant PERSONAL variable, the resulting regression is shown in Table 8-6. The R^2 for this model remains at 0.550.

Table 8-6
Regression Results with 7 Scenario Variables Only

Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-5.929	.412		-14.392	.000
	AGE	.101	.008	.151	12.835	.000
	FINANCE	-.874	.133	-.072	-6.553	.000
	GENDER	.658	.137	.054	4.791	.000
	LNSERV	3.838	.072	.650	53.317	.000
	MARKET	1.033	.142	.082	7.259	.000
	OCC	.317	.060	.057	5.312	.000
	REASON	-.868	.134	-.071	-6.500	.000

a. Dependent Variable: NOTICE

In this regression, AGE, LNSERV, and OCC have positive coefficients, indicating that a higher value for these variables was associated with a longer notice period, that is, the older the age, the longer the service, or the more senior the occupational level, the longer the notice period. A poor company financial situation (FINANCE dummy coded 1) was associated with a lower notice award whereas a poor labour market condition (MARKET dummy coded 1) was associated with a higher award. The negative REASON coefficient means termination due to restructuring (REASON=0) was associated with a longer notice as compared with termination due to performance-related reasons (REASON=1). Under this analysis, GENDER is also significant indicating that female terminated employees may be awarded longer notice periods as compared with male employees. Among this list of variables, LNSERV contributes greatest to the variance. The explanatory power of this variable can be measured by the difference in R^2 between this model and the model without this variable, which is 0.31 (31%). All other variables were able to explain only one or two percent of the notice variance.

Limitations of Repeated Measures Design

One potential problem relating to this type of repeated measures design, where one respondent answered a set of 30 scenarios, is that the observations are not totally independent. The actual number of independent observations lies somewhere between the number of respondents and the number of respondents multiplied by 30. The standard errors of the OLS regression coefficients, therefore, tend to be underestimated and the resulting t-statistics inflated. As such, the actual p-values might be somewhat smaller than they should be. Various prior research studies using this policy-capturing approach have recognized the problem and have dealt with it in different ways. Hitt and Middlemist (1979) and Hitt, Ireland, Keats, and Vianna (1983), simply made the assumption of the independence of observation because precedence had existed (e.g., Stewart and Gelberd, 1972). Hitt and Tyler (1990) also cited the work of Winer (1974) to support the assumption of independence between each of the respondent's 30 observations being consistent with a within-subject, repeated-measures design. Keats (1991) argued that while the assumption of independence may increase the likelihood of a Type II error, the assumption of non-independence increases the likelihood of a Type I error. She further suggested that although researchers find neither type desirable, in exploratory research the possibility of a Type II error is less threatening than a Type I error (Hartwig and Dearing, 1979). In sum, the larger the sample size and the lower the degree of correlation of the error terms, the more robust the ordinary least square method will be (Hanushek and Jackson, 1977).

Moreover, in this analysis, the degrees of freedom (DFs) are over 4000. A t-value of 2.00 would be significant at the $p = 0.05$ level (two sided) if DF is 60. With 4000 DFs, the DF would have to reduce by a factor of 0.015 in order to really affect the factor significance at the conventional level. So there are lots of extra DFs in this situation to allow room for some degree of understatement of the standard error. Moreover, despite that the standard errors are under-

estimated, the OLS regression estimates are unbiased. Therefore, especially when the regression is used for prediction purposes, the OLS is still a good and valid method to use.

Quite a few researchers have dealt with the correlated error term problem with the introduction of dummy variables for each respondent (e.g., Blancero, 1995; Hitt and Tyler, 1991, Judge and Bretz, 1992, and Tyler and Steensma, 1995). The dummy variables are used to block within-person variance while determining the remaining variance explained by the scenario variables (Tyler and Steensma, 1995). This controls for each subject's idiosyncratic contribution to the overall regression and thus should yield accurate standard error estimates (Judge and Bretz, 1992).

This method is, therefore, also employed in this current analysis. The inclusion of dummy variables did not change the significance of any coefficients in the model, further confirming that any correlation of error terms here did not pose a problem in the interpretation of the regression results. Using hierarchical regression analysis, the dummy variables explain about 13% of the notice variance whereas the scenario criteria explain over 56%. Almost 50 dummy coefficients are significant at the $p < 0.001$ level. Since effect coding was used to create the dummies, this result implies that there is a large degree of individual differences away from the mean. Other than judging based on the scenario circumstances, obviously, the degree of leniency or strictness in the award of notice period varies with individual decision-makers. Such individual differences may be worth investigating in the subsequent analyses.

Section Summary

Among the 11 scenario variables, 7 were found to be significant. AGE, LNSERV and OCC all relate positively with NOTICE. The negative FINANCE and REASON coefficients mean that the notice period will be lower when the company financial situation is poor or the reason for termination is performance-related. The positive GENDER coefficient means that female employees tend to get a higher notice award while the positive MARKET coefficient

means that a longer notice is associated with a poor labour market condition. While the inclusion of the dummy variables for the individual respondents does not significantly affect the scenario variable coefficients, the significance of the dummy coefficients indicates great individual differences. As such, the next logical step is to determine how much of the individual differences can be accounted for by the individual decision-makers' characteristics. This is the purpose of the following set of analyses.

SET 3: Analyses Including Individual Characteristics Variables

This set of analyses is similar to the previous set, except that the independent variables matrix is more complicated as it includes the individual decision-makers' characteristics variables. The dependent variable vector is still Y_A as before. The independent variables matrix is X_B , which is obtained by tagging the individual characteristics variables onto the previous X_A matrix. These matrices are illustrated below:

Y_A		X_B
Respondent 1's 30 scenario decisions 30 (scenarios) x 1		Respondent 1's individual charac- teristics vector repeated 30 times 30 x (1 x 12) times person individual charac- teristics variables
-----		-----
Respondent 2's 30 scenario decisions 30 (scenarios) x 1	and	Respondent 2's individual charac- teristics vector repeated 30 times 30 x (1 x 12) times person individual charac- teristics variables
-----		-----
. [The pattern . continues until . Respondent 139 . has been . included, giving . a matrix of . (139 x 30) x 1.]		. [The pattern continues until the . individual characteristics . matrix for respondent 139 has . been included, giving a matrix . of (139 x 30) x 12] . .

First, a multiple regression analysis was run with NOTICE as the dependent variable and all the 11 scenario variables plus all the individual characteristics variables as explanatory variables. (The individual characteristics variables include RES_GEND, RES_AGE, RES_CHRP, RES_HRYR, RES_POST, RES_IND1, RES_IND5, OIL_CON, INVOLVE, LRESIZE, D_RANKLI, D_RANKEE). The significance of the scenario variables was not affected by the inclusion of individual characteristics variables and the R^2 increased from 0.566 to 0.579, indicating that the notice decisions were basically made according to the scenario variables differences. Relatively little (0.013) was attributable to the individual decision-makers' own characteristics differences. In other words, the large variation in the magnitude of the individuals' notice awards was beyond what could be explained by the individuals' demographic or organizational characteristics that were included in this analysis. It could just simply be that some people were lenient whereas others were "low-ball" decision-makers.

Although the individual characteristics only enhance the explanatory power of the model by a slight amount, it is still worthwhile to examine which individual characteristics are significant variables to understand the underlying factors influencing the decisions. Further analyses were conducted, gradually reducing the number of variables to include only the significant ones. CULTURE, LITIGATE, and LNSAL_98 were first taken out, as explained before. Therefore, only 8 scenario variables were included in this set of analyses. The results including all the individual characteristics variables are shown in Table 8-7. The R^2 of this model is 0.562. The number of observations for this model is 2,927 as many cases with missing individual characteristics values were excluded.

Table 8-7

Regression Including Individual Characteristics Variables

Coefficients^a

Model		Unstandardized Coefficients		Standard ized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-7.880	.958		-8.224	.000
	AGE	.100	.009	.152	10.885	.000
	FINANCE	-.880	.155	-.073	-5.679	.000
	GENDER	.707	.169	.059	4.190	.000
	LNSERV	3.691	.088	.631	41.848	.000
	REASON	-1.003	.157	-.083	-6.389	.000
	MARKET	.948	.165	.076	5.730	.000
	OCC	.404	.070	.073	5.754	.000
	PERSONAL	.191	.167	.016	1.145	.252
	LRESSIZE	.215	.052	.060	4.177	.000
	RES_AGE	-8.1E-03	.014	-.010	-.576	.565
	RES_CHRP	.529	.177	.043	2.992	.003
	RES_GEND	-.239	.168	-.020	-1.424	.155
	RES_HRYR	5.99E-02	.015	.076	4.014	.000
	RES_IND1	-1.816	.228	-.102	-7.957	.000
	RES_IND5	.165	.191	.012	.864	.388
	OIL_CON	5.32E-02	.209	.004	.255	.799
	RES_POST	7.62E-03	.158	.001	.048	.962
	D_RANKEE	-.361	.179	-.029	-2.014	.044
	D_RANKLI	.769	.195	.057	3.944	.000
	INVOLVE	-.130	.121	-.017	-1.076	.282

^a. Dependent Variable: NOTICE

After taking out the non-significant variables ($p\text{-value} > 0.05$), including the scenario variable, PERSONAL (which is the personal hardship on the employee resulting from the termination), the reduced model was run. Further non-significant individual characteristics variables were identified and removed, leaving the final reduced model with only 7 scenario and 4 individual characteristics variables as given in Table 8-8. The R^2 for this model is 0.567 with $N = 3,107$. This R^2 is slightly higher than the R^2 for Table 8-7, probably because of the missing value cases. It shows that the explanatory power of the reduced model is no less than that of the full model.

Table 8-8
Final Reduced Model with Significant Scenario
and Individual Characteristics Variables

Coefficients^a

Model		Unstandardized Coefficients		Standard ized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-8.341	.548		-15.226	.000
	AGE	9.97E-02	.009	.151	11.417	.000
	FINANCE	-.887	.149	-.074	-5.969	.000
	GENDER	.642	.153	.054	4.196	.000
	LNSERV	3.734	.080	.640	46.550	.000
	MARKET	.927	.159	.075	5.846	.000
	OCC	.385	.066	.070	5.786	.000
	REASON	-.962	.149	-.080	-6.470	.000
	RES_HRYR	4.22E-02	.009	.056	4.545	.000
	LRESSIZE	.291	.045	.079	6.526	.000
	RES_IND1	-1.855	.215	-.102	-8.609	.000
	D_RANKLI	1.042	.161	.077	6.467	.000

^a. Dependent Variable: NOTICE

Therefore, for the individual characteristics variables, as shown in Table 8-8, only the respondents' years in HR (RES_HRYR), size of their organization (LRESSIZE), whether their industry was manufacturing (RES_IND1), and whether the avoidance of litigation was their main severance compensation objective (D_RANKLI), are significant at the $p < 0.001$ level. From these results, it can be concluded that notice period is positively related to the length of service in HR and the size of the organization. The manufacturing industry was associated with a shorter notice period. When avoidance of litigation is the primary severance compensation concern, the notices awarded were higher as compared with respondents whose main objective was to help the employee or to be fiscally responsible to the organization.

One concern in the regression involving the individual characteristics is that a number of cases (34) contained missing values for LRESSIZE. This is mainly because there were 18 respondents who were consultants and the size of their organization that they reported on the

survey was probably not as related to their decisions than the average size of the organization of their clients for whom they were making their recommendations. For such cases, LRESSIZE was considered to have missing values. Since the consultants' client profiles were not known, the missing values were substituted by the mean size of organizations in the data set so that fewer cases would have to be thrown out. Mean value substitution was also used for the other missing value cases for this variable. (Estimation by the regression method is inappropriate as the other individual characteristics variables are able to explain very little the LRESSIZE variance.) The regressions with LRESSIZM (the variable with missing value substitution) replacing LRESSIZE did not result in any differences in the interpretation of the significance levels of either the scenario or individual characteristics variables although there were some changes to the magnitude of the coefficients for the size and RES_HRYR variables.

Section Summary

Only four individual characteristics variables were found to be significant. The respondents' years in HR (RES_HRYR) and the size of their organization (LRESSIZE) are positively related to the notice period. Respondents in the manufacturing industry (RES_IND1 coded 1) are associated with a shorter notice period, while respondents with avoiding litigation as their main severance compensation objective (D_RANKLI coded 1) are associated with a longer notice. Overall, notice period decisions are largely explained by the scenario variables. Although the individual characteristics variables have relatively little contribution to the explanatory power of the models, the several significant individual characteristics variables are still having an impact on the decisions. Among these variables, the effect of RES_HRYR is of specific research value, as practitioners interviewed were generally interested in knowing the influence of experience level on notice decisions. As such, further discussion on this variable is warranted. This will be the focus of the next set of analyses.

SET 4: Analyses Focusing on HR Experience

This set of analyses will be similar to the previous set of analyses, except that only HR experience is examined in details among the individual characteristics variables. In the previous OLS regressions (re: Table 8-8), experience of the HR practitioners, RES_HRYR, was a significant variable in the notice period decisions with p-value at 0.000. The next research question is to see if experience would cause any differences in the weights of the other determining factors used by the decision-makers. To make the slope shifters (or interaction effects) simpler, a dummy variable CAT_EXP was first created using the variable RES_HRYR. For RES_HRYR less than 10 years, CAT_EXP was coded 0. For RES_HRYR of 10 or more years, CAT_EXP was coded 1. Although this cut-off point of 10 years is arbitrary, given that severance compensation involves complex policy level decisions and can have significant financial implications for the organization, an HR practitioner probably would require 10 or more years of experience to be considered as "experienced" in this area. The slope shifters were formed by multiplying CAT_EXP with the 7 significant scenario variables individually.

First, a regression of NOTICE was run with just CAT_EXP added to the list of independent variables in Table 8-8 excluding RES_HRYR. That is, the independent variables included AGE, FINANCE, GENDER, LNSERV, MARKET, OCC, REASON, LRESSIZE, RES_IND1, D_RANKLI, and CAT_EXP. The results gave CAT_EXP a significance level of $p < 0.001$. This confirmed that the significance of the experience variable had not been reduced by the use of a categorical variable. A further regression with CAT_EXP and all the slope shifters was then conducted. The result is that when the slope shifters were included, only one slope-shifting variable (CAT_EXP multiplied by LNSERV) was significant. However, the main effect of CAT_EXP became non-significant. (The same is true even after removing the non-significant slope shifters.) The adjusted R^2 of the slope shifting model and the main-effects model are the same, at 0.566. This indicates that the slope-shifting model is not any better at explaining the variance than the main effect model. In general, there is insufficient evidence to

conclude that the experience shifted the weight of the scenario coefficients. To further understand this, the coefficients of the more experienced group and the less experienced group are presented separately in Table 8-9 as follows. (Due to the negligible explanatory power of the individual characteristics, the focus for this analysis will only be on the significant scenario variables and the effect of decision-makers' HR experience on them.)

Table 8-9

Regression Results by Decision-Maker Experience

	Unstandardized Coefficients ^a		
	More Experienced Group	Less Experienced Group	Overall Group
Constant	-6.318	-5.219	-5.753/-6.609 ^b
AGE	0.104	0.097	0.102
FINANCE	-0.876	-0.871	-0.874
GENDER	0.758	0.457	0.671
LNSERV	4.005	3.398	3.830
MARKET	1.085	0.886	1.028
OCC	0.323	0.329	0.325
REASON	-0.898	-0.832	-0.877
R square	0.582	0.527	0.551

Notes:

a. All the coefficients and constants for the more experienced group and the overall group are significant at $p < 0.001$ level. For the less experienced group, $p = 0.000$ for AGE and LNSERV, 0.001 for FINANCE, 0.002 for MARKET and REASON, 0.006 for OCC and 0.097 for GENDER.

b. Ignoring any slope shifting effects for the scenario coefficients, the overall group has one coefficient for each scenario variable. However, the constant terms for the more experienced group and the less experienced group differs because CAT_EXP is significant. The first number presented is the constant term for the more experienced group while the second is for the less experienced group. The difference equals to the coefficient of the dummy CAT_EXP variable.

As discussed above, the overall model probably explains the variance as well as the other two models separately. However, the more experienced group seemed to have awarded longer notice periods (as confirmed by difference in the constant terms and the significance of the CAT_EXP variable in the regression analyses discussed earlier.) The more experienced group's decision model also tends to be more consistent, with a higher R^2 than the less experienced

group. Therefore, experience did matter in terms of the magnitude and consistency of awards. Although the coefficients presented here appear to suggest some differences for the variables LNSERV and GENDER (especially with GENDER being significant for the more experienced group but not for the less experienced group), the slope shifting model did not offer sufficient evidence to conclude statistical significance for the slope shifting effects. Future research using a larger sample should focus more on these two variables in particular when experience of the decision-maker is concerned.

Section Summary

HR experience is a significant determinant of notice period under the OLS regressions whether a continuous variable RES_HRYR or a categorical variables CAT_EXP was used. The more experienced group was found to be more generous in awarding the notice periods and their decision models more consistent. Although there are some indications that the more experienced group placed more emphasis on the length of service criterion, the analyses did not offer sufficient evidence to conclude statistical significance of such a slope shifting effect.

SET 5: Multivariate Regression Analyses

So far, the analyses of the individual characteristics variables have made use of OLS regressions only. It was mentioned earlier that the inflation of the t-statistics as a result of the repeated measures design and the lack of total independence among observations poses a limitation to the study. Another approach to analyze the effects of the individual characteristics variables that may avoid such a limitation is the multivariate regression method.

In the multivariate regression analyses, the 30 scenarios were regarded as 30 treatments, and the 30 notice period decision variables, one for each scenario, became the dependent variables. This is similar to a set of 30 simultaneous multiple regressions with notice periods as the dependent variables and the individual characteristics variables, namely, RES_GEND, RES_AGE, RES_CHRP, RES_HRYR, RES_POST, RES_IND1, RES_IND5, OIL_CON,

INVOLVE, LRESIZE, D_RANKLI, D_RANKEE, as the independent variables. Within each multiple regression analysis, the observations should be independent, and thus, the problem of lack of independence as previously mentioned for the OLS regression can be avoided. Using this approach, coefficients for the individual characteristics variables can be compared and their significance tested (Jobson, 1991).

The first test involved checking whether it would be justified to assume the same estimated coefficients across the 30 simultaneous regressions for each independent variable. It was confirmed that the null hypotheses of equality of coefficients could not be rejected for all the individual characteristics variables except RES_GEND. This lends support to the use of OLS regression, which would give only one coefficient for each individual characteristics variable. Obviously, had the coefficients been found to be significantly different across the regressions, one would not be able to say that the one coefficient generated by the OLS procedure for each individual characteristics variable would be appropriate for interpretation. RES_GEND was not found to be significant in the prior analyses; therefore the inequality of this variable's coefficients should not pose a problem.

Next, tests were done on the significance of the coefficients. The test using the full model with all the individual characteristics variables as mentioned above yielded only LRESSIZE as marginally significant ($p = 0.104$, two tailed). RES_AGE and D_RANKLI, though non-significant at the 5% conventional level, came next in the level of significance, having Wilk's Lambda p -values of 0.125 and 0.135 respectively (two-tailed). A reduced model was therefore used with these variables. RES_HRYR was also included as experience had been shown to be very significant under the OLS analyses. The Wilk's Lambda p -values of the results are 0.11, 0.14, 0.013, and 0.08 (two-tailed) respectively for RES_AGE, RES_HRYR, LRESSIZE, and D_RANKLI, indicating that only LRESSIZE and D_RANKLI are significant, with the latter significant at the conventional level of 0.05 (one-tailed). Another reduced model with only the

individual characteristics variables significant in the previous OLS regression, i.e., RES_HRYR, LRESSIZE, D_RANKLI, and RES_IND1, gave similar results with significance found only for LRESSIZE and D_RANKLI. Although RES_HRYR is not significant at the 5% conventional level in this set of analyses, its direction of prediction is generally consistent with that indicated by the OLS regression, that is, the more experienced practitioners gave higher awards than the less experienced. One possible explanation for the non-significance here may be that experienced and inexperienced practitioners did not award notice differently based simply on the 30 scenarios as treatments per se. In other words, the scenarios themselves did not offer a systematic criterion for decisions of practitioners of different levels of experience. Rather, it was the factors underlying the scenarios that were important to the decisions. Therefore, when the individual scenario variables were controlled for in the OLS regression, RES_HRYR was significant. Similarly for RES_IND1, the coefficients estimates are all in the same direction as that predicted by the OLS regressions, although they do not reach the same level of statistical significance in this set of multivariate analyses. Re-running of the multivariate regressions using LRESSIZM to replace LRESSIZE did not result in any major changes in the significance levels of the coefficients.

Section Summary

The multivariate regression analyses confirm that size of the organization and avoiding litigation as the most important severance compensation objective are significant determinants of notice periods. Although HR experience and the manufacturing industry dummy variable were not found to be statistically significant at the 5% level, the predicted directions are generally the same as those under the OLS regressions. Moreover, the p-value for HR experience indicates that it is only marginally non-significant in this set of analyses.

Discussion of Findings

In this section, the focus is on the aggregate results, with special reference made to the

individual level analyses only as necessary. First, the significance of the scenario variables will be discussed in relation to the hypotheses. Next, the overall applicability of the theoretical approaches will be analyzed. Finally, the significance of the individual decision-maker's characteristics will be examined.

Scenario Variables

The important determinants of notice period decisions relating to the situational (scenario) variables from the HR perspective as found in the previous section are length of service, occupational level/salary, age, labour market condition, company's financial situation, reason for termination, and gender of the employee. The most prominent determinant, irrespective of the type of analysis conducted, is the length of service. That is, there is strong support for H-B1(a) and H-B5(a) in that the longer the length of service, the longer the notice award.

Salary was found to be a critical variable whenever it was included in the analyses. It represents the employment status of the employee. However, as explained before, the final sets of analyses have excluded this variable due to collinearity problems with the occupational level. When salary was excluded, occupational level became a critical determinant in the predicted direction. Overall, the findings support the contention that the notice period decision is positively related to the employment status, as indicated by salary and/or occupational level, thus, lending support to H-B5(b), H-B5(c) and H-B1(c), H-B1(d).

Age of the terminated employee is a critical determinant. The older the employee, the longer the notice award. This is likely due to the greater difficulty for older employees to find a comparable job. Thus, H-B1(b) and H-B9 are confirmed. Also, a poor labour market condition was found to be associated with a longer notice period, probably again because employees are expected to take longer to find employment. Hence, H-B1(e) and H-B8 are supported.

The company's financial situation also entered the decision picture. A poor financial

situation was found to be associated with a lower award. This is as expected according to the ability-to-pay theory and H-B4 is confirmed.

The reason for termination is also a significant determinant of notice period. Results confirmed that employees who were terminated for performance-related reasons were awarded notice periods that were less than those terminated for reasons of restructuring. That is, when the termination is not due to the employees' fault, but for reasons beyond their control, there was the tendency for HR practitioners to grant slightly higher awards. The findings suggest support for H-B6.

Gender of the employee appears to be a significant variable under the aggregate analysis. However, it should be noted that this GENDER variable was given negligible weight in the subjective ratings and found to be significant in only 6 of the over 140 individual level models. Moreover, the t-statistics for GENDER in this aggregate analysis was the lowest in absolute value among the significant factors. With the limitation that the t-statistics in the repeated measures design may be inflated, caution must be exercised in determining if GENDER is really a significant variable. While GENDER was found to be significant among the decisions for the more experienced group, it did not seem to be so for the less experienced group. Given the inconsistency of the findings, further research should focus on this variable to confirm its effect one way or another. For the purposes of this research, I would hesitate to conclude that female employees generally get higher awards. However, the evidence helps to disconfirm H-B5 (d) which predicts that the notice period will be in favour of male employees.

Personal hardship on the employee resulting from the termination was not found to be consistently significant. Thus, H-B7 cannot be confirmed. This shows that there are general limitations as to how far HR practitioners can help a terminated employee given the various legal and organizational constraints. It is also likely that in massive layoffs, an individual employee's personal situation cannot feasibly be taken into consideration due to a fear of precedent setting.

There is no evidence to support H-B3 and H-B10 that the risk of litigation or a company culture in favour of caring for employees was related to a longer notice period. The data did not point in the hypothesized direction. However, a noted limitation of the design was the small number of scenario combinations and the variables' correlations with other significant variables. A greater number of scenarios might have allowed for a clearer delineation of their unique effects. Further research may wish to re-examine these variables.

Theoretical Implications

The results show that various theoretical perspectives, namely, the legal, economic/financial, and social, are operative. All of the five factors found significant in the analyses of the legal cases in Part A are significant from the HR perspective as well, indicating that the HR practitioners take into account legal considerations to avoid unnecessary litigation. As for the magnitudes of the decisions (re: H-B2) and the weight of the various factors used between the legal and HR practitioners, these will be further investigated in the following chapter. Economic and financial concerns enter the decisions as the company's financial situation was found to be a significant predictor. Logically, when a firm is in financial trouble and especially when massive terminations are required, the firm is limited by its ability to pay. On the other hand, it does not appear that HR practitioners will increase the award for high-risk litigation cases to avoid the possible legal costs. This may be explained by some practitioners' comments such as "it does not mean squeaky wheels should get more". If the practitioners feel the severance compensation is fair and they are confident that they have made a reasonable decision, they may not be inclined to change their decision because the employee threatens to sue. Overall, economic and financial aspects matter, but not to the extent that principles of fairness will be overridden. There is a balance between business and principles.

The significance of length of service and occupational level/salary lends support to both human capital theory and equity principles of social justice theory. The results confirm that past

investments in or contributions to the firm are important determinants of severance compensation. In other words, compensation that takes into account past investment/contributions made by the employees is probably seen as fair from both an economic and a social perspective, not just a legal perspective. The finding that terminations for performance-related reasons are related to a shorter notice shows that equity and attribution theories apply. Obviously, in making the notice decisions, there are more criteria to consider than simply following past legal decisions or optimizing financial results. HR practitioners probably perceive it as equitable to compensate employees who are terminated for no fault of their own more than those terminated for performance-related problems.

Other than equity principles, social justice theory can also be addressed from the need principle. Among the four hypotheses suggested in the need principle section (H-B7 to H-B10), two are supported by the findings. They are related to age and the labour market conditions (H-B8 and H-B9). Employees terminated at an older age or thrown into a poor labour market condition are going to have a more difficult time finding alternative employment and thus require for a higher compensation. As mentioned in the conceptual framework chapter, the theoretical perspectives are not mutually exclusive of each other. For example, in this case involving age and the labour market condition, the same relationships are hypothesized by the legal approach as well. Therefore, it is hard to specifically conclude whether the decision-makers were considering these factors simply because of the legal constraints or because they also applied the need principle. The other two hypotheses under the need principle that are not supported by the data involve personal hardship and the company culture as discussed earlier. It seems that the HR practitioners did take needs into consideration in their decisions, but they are more inclined to look at the more objective indicators, namely age and the labour market, than the harder-to-prove or less concrete factors like personal hardship and company culture. On the other hand, it can

also be argued that the primary reason for age and labour market conditions to be considered is that they are criteria used in courts.

Finally, it is hypothesized that severance formulae that emphasize the overriding importance of the length of service and occupational levels has been institutionalized (H-B11), thereby, making these two factors the most significant factors among all the notice period determinants. Results undoubtedly support that length of service is the most prominent determinant of notice decisions. The difference in R^2 s of the regression model presented in Table 8-6 (which included this length of service factor) and the same model without this variable is 0.31, indicating the significant unique contribution this factor has to the explanation of the notice period variance. The variable that came next in its explanatory power is age, accounting for an R^2 difference of about only 2%. Occupational level does not seem to explain the variance any more than the other variables. Therefore, the proposition in H-B11 that both length of service and occupational level are the two most important determinants is not totally supported by the findings. Only the length of service was proven to be more important than the other factors but apparently not the occupational level.

Decision-makers' Individual or Organizational Characteristics

The list of decision-makers' individual or organizational characteristics tested in the analyses includes their gender, age, HR experience, involvement in severance compensation, position level, possession of professional designation, value system (main objective of severance compensation), and the size and industry type of their organization. Among these variables, only a few are significant. The larger the size of the respondents' organization, the longer the notice period. This may reflect that larger organizations have been more generous in severance compensation and that the severance compensation level of the respondents' organization was probably used by the respondents as a reference point for their decisions.

There are indications that, overall, the more experienced practitioners were more generous in granting the award. However, in terms of the coefficients of the scenario variables, no major difference was found between the more experienced (10 years of more) and the less experienced groups. That is, the slope shifting effects relating to the dichotomous experience variable were non-significant. The exact reason behind the more experienced group awarding longer notice is not known but a few explanations can be offered. It is likely that the more experienced group have greater authority and influence. They understand that common law decisions are generally much higher than the legal minimum provided in statutes. As such, they may be more comfortable to award longer notice periods, confident that they could justify their decisions. For the less experienced group, they may be more hesitant to go much above the legal minimum or go beyond the so-called rule-of-thumb formulae. In the survey, when the respondents were asked what their biggest challenge was in severance compensation, quite a few indicated that convincing top management and line management of the reasonable amount might be difficult. Apparently, line managers did not always understand the difference between the statutory minimum and the common-law reasonable notice period. As such, “selling” the severance package to them could be a challenge. This reveals that relative to those with more experience, HR practitioners with less experience may be less comfortable to approach top or line management with higher awards, even when the circumstances render such amounts reasonable. Another possibility is that organizations that value their human resources and have fair and generous compensation packages are more likely to attract and retain experienced HR practitioners. Consequently, experience may be related to the organization characteristics which the survey has only partially captured (in terms of size and industry).

Among the industry variables studied, only the dummy variable for the manufacturing industry reached the level of significance under the OLS regression analysis. This suggests that there might be industry differences in that employees terminated from the manufacturing sector

usually are awarded less in notice. This is not surprising as the manufacturing industry is largely comprised of blue-collar workers, and compensation for these workers is generally recognized as not as high compared to the white-collar workers. The rule-of-thumb formula suggested by some HR manuals (e.g., Human Resources Management in Canada (Agarwal et. al, 1983)) for hourly-rated workers (who are usually associated with blue-collar workers) is less generous than for salaried workers. As the number of cases available from the survey response for the manufacturing industry was fairly small (15) and the manufacturing industry dummy variable was found to be significant only in the OLS regression but not in the multivariate regression analysis, future research is needed to corroborate the findings.

Another individual characteristics variable found significant relates to the value system of the decision-maker. It was expected that respondents whose main objective in the severance decision is avoidance of litigation or to help the employee as much as possible would give longer notices than those whose main objective is the fiscal responsibility to the employer. Evidence supports the former prediction but not the latter. That is, respondents who were most concerned about avoiding litigation were more generous in giving their awards than those who were not. Therefore, although there is a lack of evidence to support that the scenario factor for risk of litigation is significant, it is evident that possible litigation costs did influence decisions. However, it relates to inter-practitioner differences rather than intra-practitioner differences across scenarios. The association of higher awards with the avoidance of litigation suggests that economic and financial concerns may play a role, although it is possible that some HR practitioners just would not want to run the risk of jeopardizing their own position and authority by court challenges.

Interestingly even if some HR practitioners said they would like to help the employees as much as possible, there is no evidence that this was reflected in the level of severance compensation. Actually, this finding is quite in line with the non-significance of the personal

hardship factor. It should be noted though that a number of responses to this question indicate that HR professionals are fair to not only the employee, but also the employer, and that fairness and consistency (rather than generosity) are paramount. Besides, there are obviously many other important criteria to use to determine the notice period, and there is always a cognitive limitation in the number of cues that could be included in a decision. Personal circumstances probably did not appear to be as important as some of the other factors and thus was not included in the practitioners' cognitive decision models. In some interviews with the HR practitioners, the message conveyed was that they would like to help the employees but the way to do it might be through non-monetary means. For example, outplacement counselling and retraining may be used rather than increasing the amount of severance compensation that is often tied in with some specific criteria or company formulae. There are obviously various organizational constraints that limit HR practitioners' discretion and HR professionals generally recognize their responsibility to the organization as well as to the employees.

Chapter Summary

Overall, the notice period decisions were largely explained by the scenario variables, in particular, the length of service. As some practitioners mentioned in the survey comments section, severance decisions can be complex and it was sometimes difficult to determine what criteria should be used and what weight should be attached to each criterion, and to maintain consistency across situations. The results suggest that no one theory can explain the notice decision satisfactorily. Other than legal concerns, economic/financial theories and social justice principles did influence HR practitioners' decisions. Further investigation of the difference between the legal and HR decisions will be conducted in the next chapter. As length of service is the predominant variable, it shows that the investment or contribution aspects of the employees are the most important considerations. Individual decision-maker characteristics have some influence too, but relative to the scenario variables, they have only limited contribution to the

explanatory power of the notice variance. It was also noted that the factors found significant in the scenario decisions generally match those rated as relatively more important according to the practitioners' subjective ratings in Table 8-2, with the exception of gender and company financial situation which were both rated relatively low subjectively but found to be significant in the scenario decisions. This indicates that HR practitioners, while recognizing most of the important decision factors that they use, either do not fully understand their decision criteria, or are under-reporting the emphasis they placed on these two factors, possibly for social desirability reasons.

Chapter 9

Comparison of the Legal and HR Perspectives

A comparison of the HR practitioners' decision model with that of the legal perspective shows that some critical factors are quite consistent, with length of service no doubt a very important explanatory variable under both perspectives. Age and labour market conditions are found to be significant in both legal and HR models as well. Employment status, in terms of either salary or occupational level, is also a critical determinant under both perspectives. Under the legal model, both salary and occupational level variables are significant indicating that judges take into consideration both of these components. This is understandable because unlike the HR cases where the occupational level was given, judges had to decide on the employment status themselves by noting not only the position title and responsibilities of the employee, but also the salary level. Unfortunately, under the HR model, due to the collinearity between salary and occupational levels, stable and unique effects for these variables could not be estimated at the same time, and thus, only the occupational level variable was included in most of the analyses, which was found to be very significant. Later on in the section, a comparison will be made for the four variables found significant under both the perspectives (excluding salary, which is significant in the legal part, but as explained above, a comparison across perspectives on this factor is not feasible), namely, length of service, occupational level, age, and the labour market condition.

One of the purposes of this thesis is to determine if the legal and HR perspectives deviate from each other. It was expected that HR decisions would probably take into consideration other organizational factors not commonly acknowledged by courts. In this study, poor company performance was found to be not statistically significant under the court decisions although it was in the direction predicted. Probably, this factor only came into the picture in a near-

bankruptcy situation. In the HR decisions, poor company financial situation is a significant determinant that may reduce an average notice period decision by almost a month.

Also, bad employee performance was found to be insignificant in court decisions. This empirical finding, together with the Supreme Court decision in 1998 (*Dowling v. Halifax (City)*),³³ Canadian Cases on Employment Law (2d) 239), confirms that “near cause” plays no role in the legal notice period decisions. However, for the HR practitioners, not only was the performance-related termination situation found to lower their notice period decisions, as expressed by some interviewees, they actually felt that it should be the case. That is, some practitioners considered that it was fair and justifiable to help the employees terminated for non-performance-related reasons more than those terminated for some fault of the employee’s own, as long as it did not jeopardize the overall consistency of the application of their severance policies. A word of caution to the HR practitioners may be necessary in light of these circumstances. If they were to lower the notice period for near-cause situations to that below what courts may give, they may find themselves at a higher risk of having litigation for such cases. Even if they do not provide awards for near-causes lower than those that may be given by the court and raise instead the awards for the non-performance-related terminations, there is still the risk of being sued for discriminating against employees on the grounds of near cause. Whether this would be upheld in the civil court is yet to be determined. This is not to suggest that HR practitioners should blindly follow legal decisions. They should be aware of such implications and assess the risks involved in making any decisions. In other words, there may be a need to balance between a legally justifiable decision and a morally justifiable one. Practitioners have also commented on the survey that keeping proper documentation for proving a just cause dismissal was a challenge. They conveyed that it is time for managers to be educated about the significance of such documentation as the company is liable for giving a full reasonable notice period as long as just cause cannot be proven.

The other variable that was found significant under the HR decisions but not in the court decisions is gender of the employee. However, as suggested in the HR analyses section, the significant finding needs to be corroborated, as the t-statistic for this variable was the lowest among the significant variables, and the t-statistic might have been inflated due to the repeated measures design. Moreover, gender was also found to be significant in very few of the individual level regression models. It would be advisable for the HR practitioners to ignore the gender effect as decisions based simply on gender difference are discriminatory, which contravenes the human rights legislation.

After comparing which variables are significant, the next research question is whether there is a difference in the overall magnitude of the notice decisions. This will be dealt with using a general descriptive approach, followed by a statistical analysis.

Using the condensed model in column (c) of the listwise deletion method (Method I) in Table 5-3 as the legal model and the model in Table 8-6 as the HR model, the notice periods awarded under the two perspective for different occupational groupings are shown in Table 9-1. In this comparison, the individual characteristics variables for the HR perspective were not included because (a) they have very limited explanatory power, (b) they do not significantly affect the coefficients of the scenario variables, and (c) it is better to compare apples with apples as the individual decision-maker characteristics variables were not captured in the court cases.

Table 9-1

Comparison of Legal and HR Awards Using Average Situations by Occupational Levels

		Occupational Level			
		1	2	3	4
Age (years)		41.6	49.2	45	46.5
Salary (1996 \$ p.a.)		37619	49241	53123	118928
Service (years)		7.57	10.845	8.731	9.706
Notice Period Awards (in months):					
(a) With no special situations for labour market, company finance, or termination reasons.	Legal	6.33	10.46	10.13	13.88
	HR	7.35	9.81	8.87	9.75
(b) With poor labour market condition	Legal	7.55	11.67	11.35	15.10
	HR	8.38	10.84	9.90	10.78
(c) With poor company finance and termination due to performance-related reasons	Legal	6.33	10.46	10.13	13.88
	HR	5.60	8.07	7.13	8.00

The top part of the table provides the average age, salary and service descriptions of the real court cases by occupational level. Such information would be used to calculate the awards under the two perspectives (except salary is not used for the HR model) which are shown in the bottom part of the table. As gender of the employee was found to be significant in the HR model, in calculating the HR awards for comparison purpose, the average of the notice for a male and for a female employee was used. Row (a) compares the situation between the two perspectives under a general situation where there is no poor labour market condition, no poor company financial situation, and no performance-related reasons for the dismissal. The latter two factors were found to have negatively affected the HR decisions but not the legal decisions. Row (b) compares between the two perspectives where the labour market condition is poor. Row (c) involves the situation where there are both poor company financial situation and performance-related termination reasons. There are of course various other possible combinations of these factors but these three comparisons should provide a good illustration of the general and the approximate upper and lower end decisions for an average situation.

It can be seen that other than for the lowest occupational grouping, the notice awards given by the courts are generally higher than those given by the HR practitioners. For the middle levels where no special situation adversely affecting the HR decisions is in place, the awards under the two perspectives seem more comparable. However, for the most senior occupational level, the deviation is as large as 4 to 6 months for an average case. There are some indications that the overall HR decisions for senior occupational level employees are less generous, but for the most junior occupational level, HR practitioners might be a little more lenient. This can be due to the recognition of the employees' needs or that the practitioners just tend to avoid granting the upper and lower end extremes. In the next segment, a more sophisticated statistical procedure will be used to compare the magnitudes of the awards between the two perspectives as well as the coefficients of the common significant variables.

Since there are more significant variables under the HR model than the court model, these extra variables, namely, GENDER, REASON, and FINANCE, were first controlled for. That is, a regression analysis was run with NOTICE as the dependent variable and these three variables as the independent variables. The residuals were saved in the database spreadsheet. The constant term of the regression model was then added back to the residuals to form the revised NOTICE, which has now controlled for the effects of the three independent variables. A regression analysis of the revised NOTICE on the four other significant variables, namely, AGE, LNSERV, OCC, and MARKET, is in Table 9-2 as follows:

Table 9-2

Regression Results of the Reduced HR Model
(dependent variable NOTICE having controlled for GENDER, REASON, and FINANCE)

Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-7.817	.366		-21.334	.000
	AGE	.108	.008	.168	13.644	.000
	LNSERV	3.560	.071	.626	50.049	.000
	MARKET	1.097	.140	.091	7.847	.000
	OCC	.456	.060	.085	7.536	.000

a. Dependent Variable: RESIDCON

It is noted that the legal model has one critical factor more than this reduced HR model, which is salary. Since salary and occupational levels are highly correlated, unlike gender, termination reason, and company finance, which are quite independent of the other scenario variables, the method used to “reduce” the HR model is not appropriate to “reduce” the legal model. In other words, the effect of OCC would be severely affected if LNSAL_96 were to be controlled for. Since the HR model uses only OCC and not the salary variable, it is probably justifiable for comparison purpose to exclude the salary variable from the legal model as well. Further, the correlation between LNSAL_96 and OCC is quite high for the court cases. The reduced legal model with NOTICE regressed on AGE, LNSERV, OCC, and LABMKT is shown in Table 9-3 below:

Table 9-3

Regression Results of the Reduced Legal Model
(with LNSAL_96 excluded)

Coefficients^a

Model		Unstandardized Coefficients		Standard ized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-10.395	1.854		-5.607	.000
	AGE	.205	.036	.376	5.715	.000
	LN_SERV	3.017	.330	.590	9.151	.000
	OCCCD	1.751	.365	.295	4.795	.000
	LABMKT	.941	.649	.093	1.451	.151

a. Dependent Variable: NOTICE

As Tables 9-2 and 9-3 show that some differences exist in the coefficients, in particular, AGE and OCC, a statistical approach which tests the null hypothesis of equal notice awards and equal coefficients across the two perspectives is useful. To accomplish this statistical approach, the two databases were combined. The dependent variable NOTICE became comprised of the revised NOTICE (after controlling for GENDER, REASON, and FINANCE) for the HR decisions and the regular NOTICE for the legal decisions. A common variable name was assigned, with OCCCD under the legal perspective and OCC under the HR perspective both called OCC, representing the occupational levels defined as previous. LABMKT and MARKET under the legal and HR perspectives were called MARKET, again representing the labour market condition, with a value of 1 coded for a poor condition. LN_SERV and LNSERV representing the length of service under the legal and HR analyses respectively were also combined to form LNSERV. A dummy variable was introduced, named HR_DUMMY that had a value of 1 assigned for the HR cases and 0 for the legal cases. Finally, 4 slope shifters were created by multiplying HR_DUMMY with each of the 4 variables, AGE, LNSERV, MARKET, and OCC, giving respectively the slope shifters HR_AGE, HR_LSERV, HR_MKT, and HR_OCC. First, a

regression model with the four main effect variables plus HR_DUMMY was run. The results are given in Table 9-4 below.

Table 9-4

Regression Results of the Combined Model
(with a dummy variable for the HR cases)

Coefficients^a

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-3.613	.586		-6.168	.000
	AGE	.110	.008	.171	14.141	.000
	LNSERV	3.549	.070	.622	50.697	.000
	MARKET	1.093	.137	.090	7.947	.000
	OCC	.474	.060	.088	7.926	.000
	HR_DUMMY	-4.323	.462	-.103	-9.363	.000

a. Dependent Variable: NOTICE

The R^2 for the model was 0.495. The negative significant HR_DUMMY variable confirms that overall, HR decisions are less generous than the court decisions. (Even when the HR model has not controlled for GENDER, REASON and FINANCE, the HR_DUMMY coefficient (–2.6) is still significant in the negative direction.) This gives support to H-B2 in Chapter 6 which expects that, all else equal, the notice period awarded by the HR practitioners will be shorter than that awarded by courts. This deviation in the magnitude of the awards can be attributed to a few reasons. First, it is possible that not all HR practitioners are fully aware of the common law decision criteria. Second, even if the practitioners are aware of the general magnitude of the court awards, it does not mean that all organizations are willing to go that far in their payments. There are always financial and budget constraints with which HR decision-makers have to be concerned. Also, it is common knowledge that not all employees paid lower than an average court award in similar situations will litigate. The employees concerned may not even know of the general court settlement amounts and if they do, there are still the questions of time and legal

costs involved. So, there is the possibility that HR practitioners purposely give awards lower than what the court may give, but not to the extent that the disgruntled employees would seek litigation. This finding lends support to the cost/benefit optimization theory under the economic/financial approach.

The next statistical analysis involves adding all the slope shifters to the above model. The purpose is to see if the coefficients of the variables differ between the two perspectives. The results of the model are shown in Table 9-5 below.

Table 9-5
Regression Results of the Combined Model
(with a dummy variable for the HR cases and the slope shifters)

Coefficients ^a						
Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-10.384	2.763		-3.758	.000
	AGE	.205	.054	.319	3.833	.000
	LN SERV	3.015	.492	.528	6.134	.000
	MARKET	.942	.967	.078	.974	.330
	OCC	1.750	.544	.324	3.214	.001
	HR_DUMMY	2.564	2.787	.061	.920	.358
	HR_AGE	-9.8E-02	.054	-.183	-1.803	.071
	HR_LSERV	.548	.497	.098	1.103	.270
	HR_MKT	.158	.977	.013	.161	.872
	HR_OCC	-1.291	.548	-.250	-2.358	.018

a. Dependent Variable: NOTICE

In this model, although the slope shifters HR_AGE and HR_OCC are significant, the HR_DUMMY variable is not. Similar results occurred when the slope shifters were added only one at a time. In no situation were the slope-shifting effect and the two related main effects all significant at the same time. It should be noted that slope shifting effects (or interaction effects) are not to be interpreted independently of the related main effects. This means that while there appear to be some differences in the coefficients for AGE and OCC, the model with the slope

shifting effects is not any better, in terms of the explanatory power of the dependent variable variance, than the previous model with only the dummy variable HR_DUMMY. This is confirmed by the fact that the R^2 for this model is 0.496, which is almost the same as that (0.495) of the previous model. Since the null hypothesis is in favour of equality of the coefficients, there is insufficient evidence to reject the hypothesis to confirm otherwise. As this is believed to be the only research that compares the two perspectives in this regard, future research should corroborate the findings and continue to monitor the changes to see if at some point, the differences may reach a level of statistical significance.

Even if the regression coefficients of the significant variables are comparable between the two perspectives, the deviation in the magnitude of the overall awards between them can have important implications for both HR practitioners and employees. When the HR awards are not as good as the court awards, employees are often the ones to lose. They are the party with limited bargaining power because they may still need a good reference from their past employer and may not be comfortable going for litigation. In terms of legal costs, as compared with an organization's entire budget, such costs may be insignificant. However, for the terminated employees, the amount of legal costs will likely come out of their final severance pay. Even if they know they can get more in court, it may not be worthwhile to pursue such a course.

For the HR practitioners, the findings indicate that it is really necessary for them to review their decision criteria. As most of the practitioners want to make reasonable and consistent decisions, it is important that they justify the difference between their notice decisions and the legal decisions. It is noted that poor company financial situation and performance-related terminations may be reasons for HR practitioners' giving of a lower award, but these factors have been controlled for before the comparison was made. Even considering the more experienced HR group, who tend to give awards higher than those of the less experienced group (about 0.9 months more for an average case), there is still a large deviation between the legal and

HR awards. If HR practitioners' objectives in severance compensation are to be fair to the employees and not be involved in unnecessary litigation, perhaps their awards should be revised upwards.

On the other hand, the difference could also mean that HR practitioners might view the court decisions as overly generous. It is possible that they would prefer the court to take into consideration the organizational financial situation and the reason for termination as well. Whether organizations would push for legal changes that will be more in line with the efficiency paradigm and the "employment at will" concept, and how far their influence may go is not known at this time. Future research, especially longitudinal studies, should determine if the extent of deviation between the two perspectives increases or decreases over time, and why.

Chapter 10

Limitations and Delimitations of the Study

The data of this study, for both the legal and HR analyses, were gathered only for Alberta and may not necessarily be generalizable to elsewhere in Canada. However, previous empirical studies have not found any conclusive significant provincial differences. Since all legal decisions are bound by the Supreme Court decisions across Canada and many courts have cited cases of other provinces in their decisions, it is expected that the decision factors should not differ too much across provinces.

It is possible that the cases decided by courts and those subsequently reported are not representative of general termination settlements. While this may be true, it should be noted that these are the cases that exert an influence over subsequent legal decisions and HR practitioners' decisions. By capturing both the legal decisions and the HR practitioners' decisions, it is believed that this should be sufficient to cover most of the broad range of decisions.

The use of HR professional associations' members as respondents is one limitation of the study. Ideally, the sample should not be limited to the voluntary membership of such associations. Unlike doctors or lawyers who must be registered with their professional association to get a licence to practice, there are certainly HR professionals or practitioners who make wrongful dismissal decisions without being associated with the HR organizations. However, this was the most logical, comprehensive, and efficient means of reaching the HR professionals. Membership of these associations is open to all HR practitioners, with qualification and experience as generally the only basic criteria for acceptance. Members of these associations come from a variety of backgrounds, serve in different industries and different size organizations, and clearly identify themselves as HR people. Thus, these associations' members should be representative of the general HR practitioners' population in Alberta, with

the exception that perhaps the rural area population may be somewhat underrepresented as both the associations' main activities are held in the two largest metropolitan cities - Edmonton and Calgary. Despite this limitation, there did not appear to be any better directories or sources available to effectively reach HR practitioners. Another advantage of using the HR associations' help is that the response rate could be expected to be higher as compared with that of a regular mail survey not sent through any connections. With the support from the professional associations, there should be a better chance that members exhibit citizenship behaviour and respond.

Another limitation of this study relates to the sample size. As there are many explanatory variables of interest under both the legal and HR perspectives but only a limited number of court cases and completed HR surveys are available, the results for some of the variables may need corroboration. This is especially so for variables for which there were few cases involved and those variables whose effects are marginally significant. As for the limitation of the repeated measures design for the HR part, it has been discussed in detail in Chapter 8. It is also noted that the lack of combinations of various factor values, due to the limited number of scenarios that could be incorporated into the HR survey, sometimes made identification of unique factor effects difficult. Unfortunately, increasing the number of scenarios was not feasible as it would probably further reduce the response rate. However, future research could probably improve on this. Since some of the variables' significance or non-significance have been confirmed in this research, future studies may focus only on the remaining questionable variables, thereby allowing for more possible combinations of such factor values. Orthogonal designs may actually be considered in such studies as the variables that should then be the focus are not naturally correlated. Future research could certainly also expand the scope to outside of Alberta, thereby, enlarging the sample sizes by increasing the number of court cases that could be considered as well as the number of potential respondents to the HR survey.

Chapter 11

Conclusions

This study shows that reasonable notice period decisions are complex. Many decision criteria may be involved and such criteria may differ among decision-makers. Under the legal perspectives, the significant determinants found for the notice period decisions, including the length of service, age, employment status in terms of occupational level and salary, and the labour market condition, are consistent with the findings of previous research work (e.g., McShane, 1983; McShane and McPhillips, 1987; and Wagar and Jourdain, 1992). However, contrary to the suggestion in previous research that the labour market factor was gaining importance, this study shows that its significance is only marginal. As the labour market situation is often tied in with the organization's performance, a shift in the balance towards the employers' interest may likely see this factor's significance decrease over time. Future research may wish to follow up on this aspect. Another contribution of this legal analysis is that it disconfirms the significance of the year of the decision factor, which had been found significant in most of the previous studies but is a factor that had never been explained. The analyses here suggest that it might not be the year of the decision per se that was related to the notice periods in the prior studies, but rather the underlying macroeconomic situation such as the unemployment condition that had been omitted in those studies. The legal analysis also indicates that there might be some industry differences in the notice awards. The construction industry might be associated with shorter periods while the government and quasi-government organizations with longer. However, due to the relatively few cases involved, the findings may need corroboration from further studies.

Under the HR perspective, all the factors found significant in the court are significant to the HR decisions as well, indicating a great extent of legal influence. However, there were also

other decision criteria not considered by the court that entered the picture. Apparently, a poor company financial situation was a consideration for the granting of a lower award and so was the situation where the employee was terminated for performance-related reasons. The findings, however, were unable to confirm that the company culture in favour of employee well-being, a high risk of litigation of the case, or a high degree of personal hardship on the employee, would increase the notice period. As for gender, there is some indication of its significance in the aggregate analysis but not quite so at the individual level. With the inevitable limitations of the current survey design, the findings, especially for factors that were marginally significant or whose effects were not in the predicted direction, may need further corroboration.

Decision-maker's individual and organizational characteristics were also found to have an influence on the notice decisions. Organization size and the HR experience of the respondents are associated with a longer notice. Practitioners whose main objective in severance compensation is to avoid litigation also tended to give higher awards. As for the respondents' industry differences, only the manufacturing industry seemed to be significantly different in some of the analyses in that the awards associated were lower.

In comparing the legal and HR perspectives, it is obvious that HR decisions involved not just the legal considerations, but also the economic or financial concerns as well as equity issues in the social and moral sense. That might be why the notice periods tended to be shorter for organizations with a poor financial situation and longer for employees terminated for restructuring. Practitioners probably considered they had a greater moral obligation to help good performing employees who were just termination for reasons beyond their control. Another important finding in this comparison is that overall the HR awards were less than those of the legal ones. This lends support to the hypothesis that HR practitioners may try to minimize the transaction cost and may pay less to terminated employees than the court, knowing that it may not be worth the employee's time and money to pursue the litigation course. However, the true

reason for this deviation should be further explored in future research. If the difference is purely due to ignorance of the general common-law settlements, then this study should provide a good reference for the practitioners. In any case, it is important that the decision-makers, both judges and HR practitioners, be able to justify their decisions and that they be consistent in the application of their decision criteria. They should also look at each other's decisions to determine if a difference should exist, and what the implications of any deviations are. This study is believed to be the first in this area comparing the two fields. More work is certainly required in the long run to understand the deviations and to see if the fields are converging or diverging over time.

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Appendix I

Summary of Landmark Court Cases on Reasonable Notice Period

Bardal v. Global Mail Ltd. ([1960] Ontario Weekly Notes 254):

The plaintiff had worked for the defendant for over 16 years and was the director of advertising of the defendant's printing company at the time of the dismissal. Judge McRuer said that in every case of wrongful dismissal the measure of damages must be considered in the light of the terms of the employment and the character of the services to be rendered. He continued to say that:

There could be no catalogue laid down as to what was reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

The judge decided one year of notice was reasonable in the circumstances. The above paragraph has since been cited by numerous judges.

Lazarowicz v. Orenda Engines Ltd. ([1961] Ontario Reports 141, [1960] Ontario Reports 202)

The plaintiff was a 49 year-old professional engineer engaged by an aircraft company at a weekly salary to discharge important, though not supervisory, duties. After 3 years of service, he was discharged not for cause but because the Federal Government decided to discontinue engine purchases from the defendant. The trial judge decided 3 months' notice was reasonable. In the Court of Appeal which affirmed the trial judge's decision, Judge Roach said "if the employer and employee at the time of the hiring had addressed themselves to the question as to the notice that the employer would give in the event of him terminating the employment, or the notice that the employee would give on quitting, what would their respective answers have been?" Clearly, Judge Roach did not only consider notice period from the employee's perspective, but also the employer's. Moreover, contrary to the Bardal decision which considered the factors at the time of the termination, this case placed emphasis on the contract term which would likely have been agreed upon at the time of hiring. This line of judgement has been used in some subsequent decisions although the Bardal approach has remained the most commonly adopted.

Bohemier v. Storwal International Inc. ([1984] 3 Canadian Cases on Employment Law 79, [1983] 40 Ontario Reports (2d) 264)

The 59 year-old plaintiff had been employed by the defendant for 35 years when he was dismissed due to the financial situation of the defendant. He had held various positions including that of a foreman. Judge Saunders stated in the trial, "The interest of the employee in adequate notice must be balance against the right of the employer to reduce its work force at reasonable cost. In times when it is hard for a dismissed employee to find alternative employment the amount of notice (or damages) required cannot be increased." In this decision, reference to the Lazarowicz v. Orenda Engines Ltd. decision was made. Judge Saunders noted, "If the issue had been addressed at the time [the plaintiff] was first employed, it would not have been reasonable

for his employer to have agreed to a notice period sufficient to enable him to find work in difficult economic times... His claim, however, is based on contract and it is not reasonable to expect that his employer would or could have agreed to assure that his notice of termination would be sufficient to guarantee that he would obtain alternative employment within the notice period.” In the Court of Appeal, it was confirmed that the economic circumstances of both the plaintiff and the defendant were proper factors which should be taken into account in assessing the period of notice. However, the trial judge had erred by not giving sufficient weight to the plaintiff’s length of employment, character of employment, and the fact that the defendant was a major employer in a small community. As a result, the notice period was increased from 8 months to 11 months.

Cronk v. Canadian General Insurance Co. ([1995] 14 Canadian Cases on Employment Law (2d) 1, [1994], 6 Canadian Cases on Employment Law (2d) 15)

The plaintiff was dismissed from her position as a clerk-stenographer as a result of organizational restructuring. She was aged 55 and had been employed for 29 years (excluding the 6-year period during which she had resigned to raise children). Judge MacPherson, the trial judge, reasoned that the paramount factor to be considered was the future employability of the worker. However, he rejected the proposition that high-status positions should automatically attract longer notice periods than low-status ones. Citing two surveys which indicated that low-status workers have more difficulty finding replacement jobs than high-status employees, Judge MacPherson set the reasonable notice at 20 months which was generally far more than previous cases would have suggested was appropriate. In the Court of Appeal, the majority affirmed the traditional principle that high-status employees are entitled to an enhanced period of notice based on their occupational status and emphasized that the availability of employment was a completely separate factor in determining reasonable notice. The Court of Appeal also disapproved of the trial judge’s use of extrinsic materials (surveys) which were beyond the scope of judicial notice, particularly without giving counsel the opportunity to make submissions with respect to them. The notice period was reduced to 12 months. (This case has important implications as it questioned the traditional principles and might open the door for future law reform.)

Wallace v. United Grain Growers Ltd. ([1997], 3 Supreme Court Report, 701, [1995] 14 Canadian Cases on Employment Law (2d) 41, [1993] 49 Canadian Cases on Employment Law 71)

The 59 year-old plaintiff had worked for the defendant as top salesman for 14 years. He had limited prospects for reemployment. He was induced to leave a previous employment and had been promised fair treatment. The trial judge set the reasonable notice at 24 months which was reduced by the Court of Appeal to 15 months. In the Supreme Court, the 24-month notice period was restored. In making the decision, the Supreme Court found that bad faith conduct in the manner of dismissal was another factor which should be properly compensated for by an addition to the notice period. The abrupt manner of the dismissal and the employer’s unfounded allegations of cause until the time of the trial were considered to have constituted bad faith conduct. As such, the trial judge’s decision of 24 months was not inappropriate.

Dowling v. City of Halifax ([1998], 33 Canadian Cases on Employment Law (2d) 239, [1996] 152 Nova Scotia Reports, [1995] 15 Canadian Cases on Employment Law (2d) 299)

The plaintiff was an engineer with the defendant municipality's Works Division. He had worked for the defendant for 25 years. His dismissal was on the ground of conflict of interest as he was believed to be involved with the company which had been awarded a contract. Although it was subsequently found that he had no direct interests in the company, other misconduct of the plaintiff came to light during the investigation, including improper interference in the contract award process and subsequent administration of the contract. The trial judge, while deciding that the employer did not have sufficient information to summarily dismiss the plaintiff, determined that it was appropriate to invoke the moderate damages principle due to the employee's conduct. Six months' notice was awarded. The Court of Appeal dismissed the plaintiff's appeal concluding that the award was not so inordinately low as to be erroneous. However, when the action was brought by the employee to the Supreme Court, the Court stated, "We do not accept any argument relating to near cause." The matter was referred back to the Trial Court to determine the reasonable notice which should have been given to the employee without prejudice to the employer bringing any separate action to address any claims it might have against the employee.

Appendix II

Factors Examined by Courts *

1. The availability of similar employment.
2. Specialization and status.
3. Age.
4. Length of service.
5. Loyalty and conscientiousness of the employee.
6. Experience in the industry.
7. Past experience in that company.
8. Educational background of the employee.
9. Qualifications of the employee.
10. The employee's family circumstances - including such matters as the fact that the plaintiff was a single mother.
11. The company flourished at least partly as a result of the employee's performance.
12. The employee bought profitable business into the company.
13. The employee was doing a good job.
14. The employee had worked a great deal of overtime for which he was not compensated.
15. The employee assumed extra duties and showed dedication to the job.
16. The employee had performed well for a number of years prior to termination.
17. The employee had been promoted just prior to termination.
18. The employee spent much of his or her career training for the position.
19. The security of the employee's position.
20. There were unique features of the job which the employee enjoyed.
21. The title of the position.
22. The employee was a key figure in establishing the company's operations.
23. The quality of the employee's work prior to termination had been deteriorating.
24. The employee, prior to termination, had received warnings of unsatisfactory performance.
25. The employee's performance was inadequate.
26. The employee had failed to achieve the objectives which the company had set.
27. The employee had relocated a number of times for the employer.
28. The employee had been stationed abroad.
29. If the employee did not have regularly assigned work hours, notice will be reduced.
30. The company was successful.
31. The stability of the employee's previous employment history.
32. The employee did not feel tied to the position and was looking at alternative positions.
33. The degree of security and status in the previous position.
34. Length of service in the previous position.
35. The job which the employee left had an uncertain future.
36. The employee was in receipt of a pension from a previous position. It is submitted that this factor should have no bearing on the length of notice since it does not related to the damage suffered from the termination.
37. The employee had been induced to leave the former place of employment.
38. The employee had been previously self-employed.
39. The employee had been unemployed at the time of hiring.
40. The plaintiff had sold a business to the defendant or its predecessor.
41. The fact that the employee knew, when taking the job, that the company was financially unstable will reduce the notice period.

42. The foreseeability of the uncertainty of the economy.
43. The project on which the employee was working was nearing completion.
44. The fact that the employee took the position in an area where it was evident there would be few other opportunities has been held in different cases both to reduce the notice and to increase it.
45. The fact that the employee had been hired for a specific account or project will reduce the notice period if the termination occurred at the conclusion of the work for that account.
46. The extent to which acceptance of the position had affected the employee's opportunity for re-employment.
47. The employee had been transferred or had relocated on accepting the position.
48. The employee had been promised an excellent future at the time of hiring.
49. The employee had known that there was a chance the job would not be long-term.
50. The size and complexity of the company.
51. The company was in recession at the time of the termination.
52. The employee had been laid off just prior to the termination.
53. The salaries of the remaining employees had been reduced after the plaintiff's termination.
54. The fact that the industry was in recession has been held both to increase and to reduce the period of notice awarded.
55. The cyclical nature of the industry.
56. Usage and customs of the industry.
57. The fact that the employment promised was of a permanent nature.
59. The employee had turned down other job opportunities while employed.
60. The employee had advised the employer at the time of hiring, of his or her need for long-term, stable employment.
61. The employee had been persuaded, at the time of hiring, of his or her promotional potential with the company.
62. The employee had no forewarning which would permit preparation for a change of employment.
63. The fact that the employee was aware of the possibility of termination prior to it occurring will reduce the notice period to which the employee would otherwise be entitled, especially if the employee had started looking for other employment.
64. If an employee was the last to be laid off in his or her category rather than one of the first, the period of notice will be reduced.
65. The employee's misconduct.
66. The employee was terminated for reasons which were not his or her fault.
67. The fact that the employee was exposed to difficult working conditions.
68. The lack of training, supervision, and support.
69. The fact that the employee was allegedly dismissed for cause although no cause existed at law will increase the notice period,
70. The manner in which the employee was dismissed.
71. The negative publicity encountered as a result of unjust dismissal.
72. The employee had not been recalled when work became available.
73. The employee required a certain period of notice in order to become qualified for a pension.
74. The amount which the employee offered to accept as a severance entitlement.
75. The parties had expected that the employee could be termination with a specified period of notice, for example, if there had been termination for cause, voluntarily entered into, which was ultimately determined to be invalid.

76. If there had been any negotiation as to the terms of severance prior to any thought of termination, the amount that the parties had considered reasonable.
77. The plaintiff's lack of ability to relocate to find alternative employment will increase the notice.
78. The fact that the employee, to the employer's knowledge, was in poor health and, consequently, it would be more difficult to find alternative employment will also increase the period of notice. However, some courts take issue with this on the basis that if the matter had been discussed at the time of hiring, a longer period of notice would not have been agreed to in the event that the employee later became ill.
79. Illness can reduce the period of notice. However, that illness must affect the plaintiff's ability to secure alternative employment..
80. The employee's failure to mitigate in order to reduce damages, or even to retrain for another type of employment, has been held to reduce the notice period.
81. The fact that the employee failed to mitigate will, in some circumstances, not reduce the damage.
82. An amount will not be included by reason that the fact of being fired, in itself, will make it more difficult for the employee to locate alternative employment although that might, in fact, affect the time that it will take.
83. The fact that the employee did not accept a reasonable offer will reduce the notice period.
84. The employee's difficulty in relocating can increase the notice period.
85. The fact that the employee is making more money in a new business will reduce the notice period.
86. The financial ability of an employee to establish a new business has been held to reduce the period of notice in a situation where the employee obtained capital from selling off shares in the takeover of the former employer.
87. The reasonable expectation of the employee based on the representations of the employer.
88. The notice received by other employees
89. The fact that serious unsubstantiated allegations were made against the employee can increase the period of notice.
90. The fact that the plaintiff has trained for the career and that the termination deprived him of that ambition.
91. The fact that the employee was replaced.
92. The fact that the employee was in receipt of a mortgage benefit which was to carry on for several more years can increase the notice period.
93. The fact that the employment was only on a temporary basis.
94. The fact that the employee was self-confident and entrepreneurial.
95. Individuals on apprenticeship programs have been held entitled to greater notice.
96. Contributions by the employee to the founding of the company.
97. If an employee has been terminated, based on allegations which will make it more difficult to be re-employed, then the notice period will increase.
98. The fact that the position provides exposure to those who could assist the employee in securing alternative employment.
99. That physically, intellectually and temperamentally the plaintiff was an attractive individual.
100. The notice that the employee would be required to provide if he or she resigned. The relevance of this factor is disputed in other decisions.
101. Advising the employer prior to the termination that the employee will be leaving shortly.
102. The reasonable expectations that the employment will be continued much longer.

103. The fact that the employee signed a non-competition clause.
104. Malice displayed by the employer to the employee.
105. The fact that employee had been induced from a secured union position to management.

Note: Different trial judges may give varying emphasis to different factors and consider some factors but not others.

Source: Levitt, Howard A. 1992, The Law of Dismissal in Canada (2nd ed.), Ontario: Canada Law Books Inc., Pg. 234-243.

Appendix III

Description of Variables for Part A - The Legal Perspective

Length of Reasonable Notice Period (NOTICE)

This is measured in terms of the number of months. Where a lump-sum amount of award was given and the salary is known, the notice period would be calculated accordingly by dividing the amount by the monthly salary. In situations where the proper notice period was mentioned, but a different period was actually awarded due to special circumstances (e.g., malicious employer behaviour), which were rare occurrences not reflecting the norm, the proper notice period would be the value taken for the dependent variable.

Length of Service (LN_SERV)

Length of service is measured in years from the time of the plaintiff's hiring to the date the notice of termination was given, or the date the dismissal was deemed to have occurred (in the case of constructive dismissal). For cases without specific hiring and termination dates mentioned, the best approximation was done. If the total length of service was mentioned, which usually was rounded to the nearest year or half-year, the mentioned length would be used. If it was not mentioned but the hiring year is known though not the exact month, the hiring time would be deemed to be the middle of the year and the length of service calculated accordingly. A natural log transformation was made to achieve a more normal distribution for this variable that is required for regression analyses.

Age (AGE and EST_AGE)

AGE is the age of the plaintiff at the time the notice of termination was given or termination was deemed to have taken place. Sometimes only the age at the time of the trial was given and in such cases, the required age would need to be calculated, rounded to a year/half-year.

In many situations, age was not given. If listwise deletion is used for such a variable, there would be fewer cases left for analysis. While the listwise deletion method would certainly be useful, other means of analysis may also be useful in view of the limited number of cases. One way to handle this missing value issue was to estimate the missing AGE values by a regression model of AGE on other explanatory variables that have a significant association with AGE, namely, LNSERV, LABMKT and LNSAL_96 (see below for definitions). (The R^2 for the model is 0.22). The new variable that contains estimated age for the missing cases is EST_AGE. Using a regression model to estimate the missing values is considered more justifiable than other ways of handling missing data like inserting the mean. Where LNSAL_96 is missing, AGE would not be estimated.

Position /Occupational status (OCCCD)

The position of the plaintiff was initially classified into the following categories. Some of the definition ideas are “borrowed” from the instructions attached to the Employment Equity forms, the completion of which is required annually of federal organizations with over 100 employees.

<u>Classification</u>	<u>Description</u>
Senior Management	usually includes chairman, presidents, chief executive officers, vice presidents and general managers, especially of large/medium organizations, whose work involves determining the business direction of the company.
Middle Management	usually includes divisional or departmental managers, managers who report directly to senior management and whose planning involves some strategic elements that impact on the organizations' success.
Junior Management	usually includes managers of a small unit or branch office whose responsibilities are more on administration, operational planning and coordination.
Professional	usually includes occupations requiring a university education and professional designation such as doctors, lawyers, accountants, and engineers. (Surveyors and consultants are also included in this category.)

Supervisory	usually includes supervisors and foremen whose responsibilities involve the supervision of other employees.
Senior clerical/sales	usually includes senior administrative support, senior clerical and senior sales personnel who work independently with minimal supervision, assuming responsibilities that are not managerial or supervisory but are higher than menial or routine duties. (The positions usually require some years of experience.)
Clerical/Salesmen/ Manual	usually includes general clerical/administrative support employees, general sales employees who may or may not be paid on a commission basis, and manual workers such as labourers and workers whose duties are more menial and routine in nature.

Usually, if the judge had mentioned the level of responsibilities, saying for example that the position was a very senior managerial position, it would be classified as such unless there is clear evidence in the description of duties that it should be classified otherwise. Where such as judgement is lacking, the position title, the description of responsibilities, and the size and type of organization, as well as the salary level would be taken into consideration in deciding the proper classification. When a professional employee was employed in the capacity of senior management, they would be classified into the latter.

Due to the need to put the categories on a linear dimension for the regression analysis, some categories that may overlap need to be combined. For example, professionals could well be equated with junior or middle management, depending on their level of expertise and experience which were not generally known. Also, from the cases, the distinction between middle and junior management could not always be made with confidence especially when the description of the duties was vague. As such, the middle management, junior management and professional classifications were combined. Similarly, the supervisory and senior clerical/sales categories could be regarded as at the same level.

The codings used in ascending order from 1 to 4 are respectively for Clerical/Salesmen/Manual, Supervisory and equivalent, Professional and Middle/Junior Management, and Senior Management, and the higher the number, the higher the occupational

level. Any finer classification would not be justifiable due to the lack of detailed information in most cases.

Relative to other codings, this one involves more subjective judgment based on the qualitative descriptions of the job responsibilities. A reliability check was therefore done by involving another rater who independently coded the occupational levels according to the above criteria. The initial inter-rater correlation was 0.83 with a Cronbach's alpha of 0.91. These reliability figures are very much in line with those in McShane's 1983 study. Cases of disagreement were discussed and variable descriptions were refined until a total agreement was achieved.

Salary (LNSAL_96 and EST_LSAL)

Salary is the annual basic salary received by the plaintiff at the time of dismissal. In the case of commission sales staff whose commission earnings were an important and integral part of earnings, commission earnings were included. Often, in such cases, the courts awarded compensation based on the average earnings in the past year. Bonuses and benefits were not included for the following reasons:

- . they were often not mentioned in details in the awards, making comparison among cases impracticable,
- . many benefits were standardized in certain companies, that is, they did not serve as a good indicator for the employees' status,
- . benefits were generally less significant in magnitude as compared with sales commission, and
- . bonuses were often discretionary in nature; where they were not, they were still mostly subject to the meeting of certain company targets, the attainment of which was not guaranteed from year to year.

To arrive at the annual salary, monthly rates were multiplied by 12, weekly rates by 52, and biweekly rates by 26. In some cases, where salary was not explicitly given, the salary amount would be calculated by dividing the total compensation award (where no punitive damage was awarded) by the number of months of notice times 12. In these situations, it is possible that the amount might have included some benefits amount but without any better information, the amount should be taken as the best approximation.

To allow for meaningful comparison, the salary amount was adjusted to the 1996 year level using the average weekly earnings index (Statistics Canada Catalog No. 72-201,72-202, 72-002). This is consistent with McShane's 1983 study. Although McShane and McPhillips used the CPI index to adjust the salary figures in their 1987 study, CPI is more related to the buying power whereas average weekly earnings is considered to reflect more the relative earnings which is a better indicator of the employment status.

Due to the deviation of the salary distribution from a normal distribution as noted by the skewness and kurtosis statistics, a natural log transformation was done. The new variable is LNSAL_96.

Similar to the treatment of missing values for AGE, where LNSAL_96 has a missing value, it would be estimated using a regression model of LNSAL_96 on the other explanatory variables that are significantly associated with it, namely OCCCD, AGE and SEX. (The R^2 for the model is 0.46). Where AGE was also missing for the case, the LNSAL-96 estimation would not be done. The new variable including estimates for the missing values is called EST_LSAL.

Sex (SEX)

Male plaintiffs were coded 1 and female 2.

Performance (GDPERF and BDPERF)

There were two variables used under this category - GDPERF and BDPERF, each coded dichotomously. Where the judge made comments that indicated the plaintiff had good

performance, using wordings such as “exemplary”, “excellent”, “very good”, “good”, “very satisfactory”, “entirely satisfactory”, GDBPERF would be coded 1. Otherwise, it would be coded 0. Where the judge made comments that indicated the plaintiff had bad performance, using wordings such as “not commendable”, “not an exemplary but a complaining employee”, or where near causes were found though not amounting to just cause (such as misconduct proven), or where in just cause cases with provisional notice given, BDBPERF would be coded as 1. Otherwise, it would be coded 0. Therefore, in cases where the performance aspect had not been mentioned or performance was considered average or generally satisfactory (i.e., neither good nor bad), GDBPERF and BDBPERF would both have code 0. Alleged bad performance not proven or acknowledged by the court would not lead to a coding of 1 for BDBPERF. In the event that the plaintiff was successful in some areas, e.g., sales, but was found to have committed some kind of misconduct, the plaintiff would not be considered a good performer and as such, GDBPERF would be coded 0.

Mitigation (MTG_GD and MTG_LK)

Two dummy variables are used for mitigation efforts. Where the judge acknowledged that the plaintiff had diligently searched for jobs or made numerous attempts or did the best he/she could, MTG_GD would be coded 1. Otherwise, the code would be 0. Where the judge acknowledged that there was a lack of mitigation efforts by the plaintiff, MTG_LK would be coded 1. Otherwise, the code would be 0.

Organizational Performance (ORGBD)

ORGBD would be coded 1 when there were losses or difficulties mentioned in the decision related to the employer’s business. Where there was an overall industry decline, the coding would depend on the context the decline was mentioned. If it was referring to the difficulty faced by the employer (rather than the difficulty the employee faced in finding alternative employment), ORGBD would be coded 1. Where organizational performance was

not indicated at all in the decision, or organizational performance was good or average, the code used would be 0.

Hiring Circumstances (HIRING)

Where the plaintiff was lured into employment from a previous secured employment or had relocated in order to take up the employment, and the termination occurred within three years after the hiring/relocation (in line with McShane and McPhillip's 1987 study), the variable would be coded 1. Otherwise, the code used would be 0. There are two reasons for including "lured into employment" and "relocation" into one variable. First, they both reflect special hiring circumstances that should increase the award. Second, there are too few cases of each for analysis and it is advisable to keep the number of variables down given the limited number of observations available.

Labour Market (LABMKT)

Where difficulty for the plaintiff in finding alternative employment was acknowledged by the court, e.g., in situation where the judge mentioned explicitly that the market was poor, diligent efforts were made by the plaintiff but fruitless, the field was of the plaintiff was very narrow or specialized, or job was scarce for people with the plaintiff's characteristics, the variable would be coded 1. Otherwise, including the case where the labour market condition was average or not mentioned, the code used would be 0.

Unemployment Rate (UAVE)

The unemployment rate used was based on the seasonally adjusted series by Statistics Canada for Alberta (Statistics Canada Catalogue No. 71-201-XPB and 71-201 Annual) averaging over the period from 5 months prior to the month of termination to 6 months afterwards. Since judges are allowed to take judicial notice of the economic climate which is normally known, the general unemployment rate should be taken into consideration. According to a court of appeal (R. V. Potts [1982], 36 Ontario Reports (2d) 195 at 201), "judicial notice" can only be taken of

information “which is so generally known and accepted that it cannot reasonably be questioned, or ... which can be readily be determined or verified by resort to sources whose accuracy cannot reasonably be questioned”. It is believed that any further breakdown of the rate by occupation or industry would not be appropriate as the knowledge would be too specific and not general enough to be allowed under judicial notice.

Where the exact termination month cannot be established, an appropriate time would be calculated using the decision date of the case less the average time between the decision and termination dates for the rest of the cases.

Industry (IND_1 to IND_5)

The industry to which the employer belonged are classified into 5 dummy categories (IND_1, IND_2, IND_3, IND_4, IND_5) which are respectively for (1) manufacturing and trading, (2) services, (3) oil and gas, (4) construction, and (5) government/quasi-government organizations. For example, a case involving the construction industry would have IND_4 coded 1 and other industry dummies coded 0.

Similar to the occupational level coding, the coding for the industry involves a fair amount of subjective element. As such, another rater was involved to do an independent rating as well. A comparison of the ratings indicated a need to redefine some categories. For example, “oil and gas” should include oil and gas related industries and “construction” should include construction-related industries such as manufacturing of concrete. In other words, if an engineering service firm provides services specific to the oil and gas sector, it would be regarded as under the oil and gas industry. Alternatively, if it provided services for all industries, it would be classified as under the “service” industry. The fundamental rationale is to look at how a specific industry downturn affects the organization in question. Moreover, “quasi-government organizations” were redefined as those organizations which receive significant funding from the government and are of fairly large organization size. Therefore, educational institutes and

hospitals were to be considered as such whereas a small private medical clinic was not. After the clarification and reclassification, all the cases were agreed upon.

Year of the Decision (YEAR)

The last two digits of the year the decision on the notice period was made were used. Where an appeal court changed the notice period, the decision year of the appeal court would be adopted.

Appendix IV Outliers for the Legal Analysis

Characteristics of the outlying cases:

<u>Notice (Months)</u>	<u>Service (Years)</u>	<u>Age</u>	<u>Occupational Level</u>	<u>Annual Salary '96</u>	<u>Labour Market</u>	<u>Lured into Employment*</u>	<u>Notes</u>
3	0.46	30	Clerical/sales/ manual worker	\$18,030			(1), (2)
12	0.92	n/a	Supervisor	\$20,404			(2)
12	0.04	n/a	Middle/Junior management	\$56,723		Yes	(2)
8	0.17	n/a	Middle/Junior management	\$44,046	Poor	Yes	(2)
24	27.8	52	Middle/Junior management	\$64,114	Poor		(2)

n/a - not available

Notes:

- (1) Found to be an outlier for Method I (listwise deletion).
- (2) Found to be an outlier for Method II (estimation method) and Method III (pairwise deletion).

* These cases were found to be outliers even in the full model in which the special hiring circumstance factor was included.

Appendix V

HR Survey on Reasonable Notice Periods

SURVEY ON REASONABLE NOTICE PERIODS FOR WRONGFUL DISMISSAL

Please check the category that best describes your involvement in "wrongful dismissal" compensation (see "Definitions" below.)

- ___ I have been the decision-maker in a number of situations
- ___ I have played a major role in making the decision by giving recommendations or advice.
- ___ I have been involved in the decision-making process and have had some minor degree of influence.
- ___ I am not involved in the decision-making but am aware of the criteria for wrongful dismissal decisions.

If you have very little idea regarding the general decision criteria for wrongful dismissal, please pass the survey to another member of your organization who handles termination decisions and request him/her to participate.

Definitions:

1. Wrongful dismissal refers to the situation of an employer-initiated termination in a non-union setting which is (a) not for just cause and (b) not in accordance with any prior termination arrangement agreement. In such a situation, the employer is liable under common-law to provide a reasonable notice of termination.
2. Notice period refers to the amount of time between the termination notification and the actual termination date, or the equivalent pay for that period in lieu of notice.

Notes for completion:

1. Prior consultation with HR professionals has highlighted some common criteria that may influence the notice period decisions. In the following pages, you will be presented with 30 scenarios describing different situations under these criteria. Please render your decision for each scenario by providing the number of months (or part-month) of notice period that you think is reasonable from your own perspective as an HR practitioner.
2. In making the notice period decisions, please assume:
 - a. you are an HR consultant advising in a general non-union setting,
 - b. you are not tied to any one particular organization,
 - c. there are no prior specific contractual/policy constraints,
 - d. you are free to make any recommendation in light of the scenario circumstances.
3. Where the "reason for termination" is said to be "performance-related", it means there are some indications of a performance problem on the part of the employee, and the employer has taken steps (e.g., training and warning) to help the employee improve but without success. The evidence, however, falls short of establishing just cause. Where the reason is "restructuring", it means there is no fault on the employee's part and the termination is beyond the employee's control.
4. "Degree of hardship on employee" means the financial or personal difficulties the employee would encounter as a result of the termination.
5. "Labour market condition" refers to the difficulty the terminated employee has in finding comparable alternative employment.
6. The scenario criteria are purposely arranged randomly in different scenarios to avoid any potential bias due to the ordering.

Appendix V (Cont'd)

2

1. Labour market condition Good
 Salary (per annum) \$30,500
 Company financial situation Poor
 Years of service 2.5
 Gender Male
 Occupational level Non-supervisory (e.g., clerical, sales)
 Degree of hardship on employee High
 Perceived risk of litigation High
 Company's concern for employees and staff relations High
 Reason for termination Performance-related
 Age 44
 The appropriate notice period is ____ months.

2. Gender Female
 Salary (per annum) \$31,000
 Age 63
 Reason for termination Performance-related
 Degree of hardship on employee Low
 Company's concern for employees and staff relations High
 Perceived risk of litigation Low
 Company financial situation Poor
 Labour market condition Poor
 Years of service 43
 Occupational level Non-supervisory (e.g., clerical, sales)
 The appropriate notice period is ____ months.

3. Occupational level Supervisory
 Years of service 6.5
 Salary (per annum) \$46,000
 Age 48
 Perceived risk of litigation Low
 Company financial situation Poor
 Reason for termination Restructuring
 Gender Female
 Labour market condition Good
 Degree of hardship on employee Low
 Company's concern for employees and staff relations High
 The appropriate notice period is ____ months.

4. Age 56
 Gender Male
 Occupational level Senior Management
 Company financial situation Poor
 Years of service 1.5
 Reason for termination Performance-related
 Salary (per annum) \$288,000
 Degree of hardship on employee Low
 Company's concern for employees and staff relations Low
 Labour market condition Poor
 Perceived risk of litigation High
 The appropriate notice period is ____ months.

5. Company financial situation Good
 Years of service 19
 Salary (per annum) \$124,500
 Degree of hardship on employee High
 Gender Female
 Company's concern for employees and staff relations High
 Occupational level Senior Management
 Reason for termination Restructuring
 Perceived risk of litigation Low
 Age 43
 Labour market condition Good
 The appropriate notice period is ____ months.

6. Gender Male
 Salary (per annum) \$48,500
 Degree of hardship on employee Low
 Labour market condition Poor
 Occupational level Supervisory
 Years of service 17
 Age 43
 Reason for termination Restructuring
 Perceived risk of litigation High
 Company financial situation Good
 Company's concern for employees and staff relations Low
 The appropriate notice period is ____ months.

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7. Salary (per annum) \$19,000
 Gender Female
 Age 30
 Company financial situation Good
 Perceived risk of litigation Low
 Years of service 0.5
 Company's concern for employees and staff relations Low
 Reason for termination Performance-related
 Occupational level Non-supervisory (e.g., clerical, sales)
 Labour market condition Poor
 Degree of hardship on employee Low
 The appropriate notice period is ____ months.

8. Perceived risk of litigation High
 Company financial situation Poor
 Age 49
 Degree of hardship on employee Low
 Labour market condition Good
 Gender Female
 Salary (per annum) \$45,000
 Years of service 20
 Occupational level Supervisory
 Company's concern for employees and staff relations Low
 Reason for termination Performance-related
 The appropriate notice period is ____ months.

9. Age 52
 Years of service 4.5
 Degree of hardship on employee High
 Perceived risk of litigation Low
 Labour market condition Good
 Occupational level Non-supervisory (e.g., clerical, sales)
 Company financial situation Poor
 Salary (per annum) \$21,000
 Reason for termination Performance-related
 Gender Male
 Company's concern for employees and staff relations High
 The appropriate notice period is ____ months.

10. Gender Female
 Company financial situation Good
 Salary (per annum) \$87,500
 Age 57
 Company's concern for employees and staff relations Low
 Perceived risk of litigation High
 Reason for termination Performance-related
 Degree of hardship on employee Low
 Years of service 3.5
 Labour market condition Good
 Occupational level Middle/Junior Management
 The appropriate notice period is ____ months.

11. Company financial situation Poor
 Age 39
 Gender Female
 Reason for termination Performance-related
 Years of service 7.5
 Salary (per annum) \$152,000
 Perceived risk of litigation Low
 Degree of hardship on employee Low
 Labour market condition Good
 Company's concern for employees and staff relations Low
 Occupational level Senior Management
 The appropriate notice period is ____ months.

12. Degree of hardship on employee Low
 Years of service 2
 Company's concern for employees and staff relations High
 Labour market condition Poor
 Company financial situation Good
 Occupational level Senior Management
 Age 42
 Perceived risk of litigation Low
 Reason for termination Performance-related
 Gender Male
 Salary (per annum) \$53,500
 The appropriate notice period is ____ months.

13. Perceived risk of litigation High
 Degree of hardship on employee Low
 Company financial situation Poor
 Age 35
 Occupational level Middle/Junior Management
 Labour market condition Good
 Years of service 7
 Gender Male
 Company's concern for employees and staff relations Low
 Reason for termination Restructuring
 Salary (per annum) \$91,500
 The appropriate notice period is ____ months.

14. Occupational level Supervisory
 Reason for termination Performance-related
 Perceived risk of litigation High
 Company's concern for employees and staff relations Low
 Salary (per annum) \$54,000
 Gender Female
 Company financial situation Good
 Labour market condition Poor
 Age 51
 Years of service 26
 Degree of hardship on employee High
 The appropriate notice period is ____ months.

15. Company's concern for employees and staff relations High
 Age 49
 Degree of hardship on employee Low
 Perceived risk of litigation High
 Reason for termination Restructuring
 Company financial situation Good
 Salary (per annum) \$101,000
 Labour market condition Poor
 Years of service 3.5
 Gender Male
 Occupational level Senior Management
 The appropriate notice period is ____ months.

16. Salary (per annum) \$41,000
 Company's concern for employees and staff relations High
 Labour market condition Poor
 Perceived risk of litigation Low
 Age 47
 Years of service 2
 Gender Male
 Company financial situation Good
 Reason for termination Restructuring
 Degree of hardship on employee Low
 Occupational level Middle/Junior Management
 The appropriate notice period is ____ months.

17. Years of service 5
 Company's concern for employees and staff relations High
 Labour market condition Poor
 Salary (per annum) \$25,500
 Reason for termination Restructuring
 Occupational level Non-supervisory (e.g., clerical, sales)
 Degree of hardship on employee High
 Perceived risk of litigation High
 Gender Female
 Company financial situation Poor
 Age 49
 The appropriate notice period is ____ months.

18. Salary (per annum) \$56,000
 Labour market condition Good
 Company financial situation Good
 Company's concern for employees and staff relations High
 Reason for termination Performance-related
 Gender Female
 Degree of hardship on employee Low
 Years of service 8
 Perceived risk of litigation High
 Occupational level Supervisory
 Age 38
 The appropriate notice period is ____ months.

19. Reason for termination Restructuring
 Company's concern for employees and staff relations High
 Age 26
 Degree of hardship on employee Low
 Company financial situation Good
 Years of service 3.5
 Gender Female
 Occupational level Non-supervisory (e.g., clerical, sales)
 Labour market condition Good
 Salary (per annum) \$43,000
 Perceived risk of litigation High
 The appropriate notice period is ____ months.

20. Occupational level Senior Management
 Company's concern for employees and staff relations High
 Labour market condition Good
 Perceived risk of litigation Low
 Age 47
 Degree of hardship on employee Low
 Company financial situation Poor
 Gender Female
 Years of service 3.5
 Reason for termination Performance-related
 Salary (per annum) \$116,500
 The appropriate notice period is ____ months.

21. Reason for termination Performance-related
 Age 37
 Company financial situation Good
 Occupational level Non-supervisory (e.g., clerical, sales)
 Gender Male
 Company's concern for employees and staff relations Low
 Perceived risk of litigation High
 Degree of hardship on employee High
 Years of service 9.5
 Labour market condition Good
 Salary (per annum) \$58,500
 The appropriate notice period is ____ months.

22. Years of service 31
 Salary (per annum) \$36,000
 Company financial situation Good
 Occupational level Supervisory
 Degree of hardship on employee Low
 Perceived risk of litigation Low
 Gender Female
 Age 56
 Reason for termination Restructuring
 Labour market condition Good
 Company's concern for employees and staff relations Low
 The appropriate notice period is ____ months.

23. Labour market condition Good
 Gender Male
 Occupational level Senior Management
 Degree of hardship on employee High
 Perceived risk of litigation High
 Years of service 8
 Company financial situation Poor
 Reason for termination Performance-related
 Age 31
 Company's concern for employees and staff relations High
 Salary (per annum) \$70,500
 The appropriate notice period is ____ months.

24. Perceived risk of litigation Low
 Labour market condition Poor
 Salary (per annum) \$43,500
 Gender Male
 Occupational level Middle/Junior Management
 Company's concern for employees and staff relations High
 Age 38
 Degree of hardship on employee High
 Years of service 6
 Reason for termination Performance-related
 Company financial situation Good
 The appropriate notice period is ____ months.

Appendix V (Cont'd)

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25. Age 63
 Gender Male
 Company's concern for employees and staff relations Low
 Labour market condition Good
 Company financial situation Good
 Perceived risk of litigation Low
 Degree of hardship on employee High
 Salary (per annum) \$74,000
 Years of service 32
 Occupational level Supervisory
 Reason for termination Restructuring
 The appropriate notice period is _____ months.

26. Company's concern for employees and staff relations Low
 Reason for termination Restructuring
 Labour market condition Good
 Gender Male
 Degree of hardship on employee High
 Years of service 2
 Occupational level Middle/Junior Management
 Company financial situation Poor
 Perceived risk of litigation High
 Age 37
 Salary (per annum) \$48,000
 The appropriate notice period is _____ months.

27. Years of service 16
 Occupational level Middle/Junior Management
 Salary (per annum) \$62,000
 Perceived risk of litigation Low
 Gender Male
 Company's concern for employees and staff relations High
 Reason for termination Restructuring
 Company financial situation Poor
 Age 40
 Labour market condition Poor
 Degree of hardship on employee High
 The appropriate notice period is _____ months.

28. Degree of hardship on employee High
 Perceived risk of litigation Low
 Occupational level Middle/Junior Management
 Gender Female
 Company's concern for employees and staff relations Low
 Labour market condition Good
 Salary (per annum) \$43,000
 Reason for termination Performance-related
 Years of service 18
 Age 48
 Company financial situation Good
 The appropriate notice period is _____ months.

29. Company's concern for employees and staff relations Low
 Degree of hardship on employee Low
 Occupational level Middle/Junior Management
 Years of service 5
 Reason for termination Performance-related
 Salary (per annum) \$63,000
 Perceived risk of litigation High
 Labour market condition Good
 Company financial situation Poor
 Gender Male
 Age 52
 The appropriate notice period is _____ months.

30. Degree of hardship on employee Low
 Years of service 9
 Company financial situation Poor
 Occupational level Supervisory
 Gender Male
 Reason for termination Restructuring
 Labour market condition Good
 Salary (per annum) \$58,000
 Perceived risk of litigation Low
 Company's concern for employees and staff relations Low
 Age 39
 The appropriate notice period is _____ months.

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Are there any other decision criteria you think are important that have been omitted in the above scenarios. If so, what are they?

Please allocate 100 points across only the criteria that you think are important in your decision-making. The points should reflect the relative importance you place on the criteria. (Note: You do not have to assign points to every criterion.)

Age	_____	Occupational Level	_____
Company's concern for employees and staff relations	_____	Perceived Risk of Litigation	_____
Company financial situation	_____	Reason for Termination	_____
Degree of Hardship on Employee	_____	Salary (per annum)	_____
Gender	_____	Years of Service	_____
Labour Market Condition	_____	Others (please specify)	_____
		Total	= 100 points

What are the major difficulties/challenges you have in making the notice period decisions in your organization?

Please rank the following objectives in relation to severance compensation (1 being the highest priority), according to your own value system.

_____	to avoid litigation
_____	to help the employee as much as possible
_____	to be fiscally accountable to the organization
_____	other (if any) _____

Any other comments you may have:

Please answer the following questions about yourself:

1. Gender: ☐ Male ☐ Female.
2. Age: _____
3. Number of years in Human Resources: _____
4. Are you a Certified Human Resources Professional (CHRP)?
☐ Yes ☐ No
5. Current position in your organization (for consultants, instructors or members with HR experience who are currently not working in an HR department, please select the level of position in HR that best reflects your qualification and experience.)
☐ Senior Management
☐ Middle/Junior Management
☐ Non-management
☐ Other _____
6. Approximate number of full-time employees in Canada in your organization: _____
7. Please check the main industry you are working in. (You may check off more than one category. For example, manufacturing of cement is under both "Manufacturing" and "Construction related". Providing further details in the blanks is preferred but optional):
☐ Manufacturing _____
☐ Services _____
☐ Oil and gas related _____
☐ Construction related _____
☐ Government and quasi-government _____
☐ Others _____

Please return the survey in the enclosed business reply envelope.

For questions, clarifications or further correspondence, please contact Helen Lam at:

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If you would like a copy of the results, please contact the researcher through one of the above means. Please do so separately from your return of the survey to preserve survey anonymity. The report is expected to take approximately four months to complete.

Thank you for your participation.

